PHILIPPINE REPORTS

VOL. 810

JUNE 5, 2017 TO JUNE 7, 2017

VOLUME 810

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 5, 2017 TO JUNE 7, 2017

SUPREME COURT
MANILA
2018

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2018

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY VI & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

HON. MARIA LOURDES P.A. SERENO, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. BIENVENIDO L. REYES, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. SAMUEL R. MARTIRES, Associate Justice
HON. NOEL G. TIJAM, Associate Justice

ATTY. FELIPA B. ANAMA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Mariano C. Del Castillo
Hon. Estela M. Perlas-Bernabe
Hon. Alfredo Benjamin S. Caguioa

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Diosdado M. Peralta
Hon. Jose C. Mendoza
Hon. Marvic Mario Victor F. Leonen
Hon. Samuel R. Martires

Division Clerk of Court
Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Lucas P. Bersamin
Hon. Bienvenido L. Reyes
Hon. Francis H. Jardeleza
Hon. Noel G. Tijam

Division Clerk of Court
Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 1051

IV. CITATIONS 1115

PHILIPPINE REPORTS

Page

ABB, Inc./Nitin Desai – Luis S. Doble, Jr. *vs.* 210
Aboitiz, Sps. Roberto and Maria Cristina Cabarrus
vs. Sps. Peter L. Po and Victoria L. Po 123
Aboitiz, Sps. Roberto and Maria Cristina Cabarrus
– Sps. Peter L. Po and Victoria L. Po *vs.* 123
Agudo *y* Del Valle, Rafael –
People of the Philippines *vs.* 918
Albania, Sofronio B. *vs.* Commission
on Elections, et al. 470
Albania, Sofronio B. *vs.* Edgardo A. Tallado 470
Alberca, Alberto Fortuna –
People of the Philippines *vs.* 896
Amoc *y* Mambatalan, Tito –
People of the Philippines *vs.* 253
Arches, Paul Jocson – Edwin Granada Reyes *vs.* 106
Armodia, Pablo Luad –
People of the Philippines *vs.* 822
Avancena *y* Cabanela, et al., Elmer –
People of the Philippines *vs.* 672
Aycardo, Salvador – People of the Philippines *vs.* 309
Baay *y* Falco, Jonathan –
People of the Philippines *vs.* 943
Balbona, Utility Worker I, Office of the Clerk
of Court, Regional Trial Court of Cebu City,
Ramiro F. – Maura Judaya, et al. 375
Bank of the Philippine Islands – Paradigm
Development Corporation of the Philippines *vs.* 539
Barcillano, Branch 13, Regional Trial
Court (RTC), Ligao City, Albay,
Judge Ignacio C. – PO1 Myra S. Marcelo *vs.* 488
Bartolata, represented by his Attorney-in-Fact
Rebecca R. Pilot and/or Dionisio P. Pilot, Danilo
vs. Republic of the Philippines, et al. 978
Bentayo, Henry – People of the Philippines *vs.* 263
Bisora *y* Lagonoy, Rolando –
People of the Philippines *vs.* 339
Bravo, Yolanda T. *vs.* Urios College
(Now Father Saturnino Urios University)
and/or Fr. John Christian U. Young 603

Page

Cabiles *y* Suarez *a.ka.* "Kano," Stephan –
People of the Philippines *vs.* 969
Cebuan, et al., Rolando C. – Republic of the
Philippines, represented by the National
Irrigation Administration *vs.* 767
Chiquita Brands, Inc., et al. *vs.*
Hon. George E. Omelio, Regional
Trial Court, Davao City, Branch 14, et al. 497
Chua, Spouses Edwin and Greta *vs.*
SACP Teresa Belinda G. Tan-Sollano, et al. 365
City of Batangas, represented by Hon. Severina
Vilma Abaya, in her capacity as City Mayor
of Batangas *vs.* Philippine Shell Petroleum
Corporation, et al. 566
Commission on Audit –
Amando M. Tetangco, Jr., et al. *vs.* 459
Commission on Elections, et al. –
Sofronio B. Albania *vs.* 470
Commission on Elections, et al. –
Information Technology Foundation
of the Philippines, et al. *vs.* 400
Commissioner of Internal Revenue –
Marubeni Philippines Corporation *vs.* 75
Commissioner of Internal Revenue –
Mitsubishi Corporation-Manila Branch *vs.* 16
Cruz, Anthony De Silva *vs.*
People of the Philippines 801
Culas *y* Raga, Porferio –
People of the Philippines *vs.* 205
Cutara *y* Brix, Jose – People of the Philippines *vs.* 999
Dadis, Delfin Domingo *vs.* Spouses Magtanggol
De Guzman and Nora Q. De Guzman, et al. 749
Datumanong, et al., Department of Public
Works and Highways (DPWH) Secretary
Simeon A. *vs.* Maria Elena L. Malaga 88
David, Eileen P. *vs.* Glenda S. Marquez 187
De Castro, Leovigildo A. *vs.* Field Investigation
Office, Office of the Ombudsman, et al. 31

Page

De Guzman, et al., Spouses Magtanggol
and Nora Q. – Delfin Domingo Dadis *vs.* 749
Descartin, Jr. *y* Mercader, Jose –
People of the Philippines *vs.* 881
Doble, Jr., Luis S. *vs.* ABB, Inc./Nitin Desai 210
Domingo *y* Labis, Sandy –
People of the Philippines *vs.* 1040
Dura Tire & Rubber Industries, Inc. –
Makilito B. Mahinay *vs.* 57
Duterte, in his capacity as Mayor of
Davao City, et al., Hon. Rodrigo R. –
Mindanao Shopping Destination
Corporation, et al. *vs.* 427
Echanez, Atty. Anselmo S. –
Virgilio J. Mapalad, Sr. *vs.* 355
Edron Construction Corporation, et al. *vs.*
The Provincial Government of Surigao Del Sur,
represented by Governor Vicente T. Pimentel, Jr. 347
Emerald Garment Manufacturing Corporation *vs.*
The H.D. Lee Company, Inc. 835
Field Investigation Office, Office of the
Ombudsman, et al. – Leovigildo A. De Castro *vs.* 31
Gaa *y* Rodriguez, Blas –
People of the Philippines *vs.* 860
Ganal, et al., Heirs of Ricardo S. –
Marlow Navigation Philippines,
Inc./Marlow Navigation Co., Ltd. and/or
Ms. Eileen Morales *vs.* 956
Grave, et al., David – Spectrum
Security Services, Inc. *vs.* 590
Hassaram, Arjan T. – Philippine Airlines, Inc. *vs.* 296
Information Technology Foundation
of the Philippines, et al. *vs.*
Commission on Elections, et al. 400
Jao *y* Calonia, et al., Allan –
People of the Philippines *vs.* 1028
Javines, Ramon Manuel T. *vs.* Xlibris
a.k.a. Author Solutions, Inc., et al. 872

Page

Judaya, et al., Maura *vs*. Ramiro F. Balbona,
Utility Worker I, Office of the Clerk of Court,
Regional Trial Court of Cebu City 375
Macaraig *y* Gonzales, Godofredo –
People of the Philippines *vs*. 931
Madridejos, Mario C. *vs*. NYK-Fil
Ship Management, Inc. 704
Mahinay, Makilito B. *vs*. Dura Tire &
Rubber Industries, Inc. 57
Malaga, Maria Elena L. – Department of Public
Works and Highways (DPWH) Secretary
Simeon A. Datumanong, et al. *vs*. 88
Mapalad, Sr., Virgilio J. *vs*.
Atty. Anselmo S. Echanez 355
Marcelo, PO1 Myra S. *vs*. Judge
Ignacio C. Barcillano, Branch 13,
Regional Trial Court (RTC), Ligao City, Albay 488
Marlow Navigation Philippines, Inc./Marlow
Navigation Co., Ltd. and/or Ms. Eileen
Morales *vs*. Heirs of Ricardo S. Ganal, , et al. 956
Marquez, Glenda S. – Eileen P. David *vs*. 187
Marubeni Philippines Corporation *vs*.
Commissioner of Internal Revenue 75
Matheus *y* Delos Reyes, Merceditas –
People of the Philippines *vs*. 626
Mendiola, Abigail L. *vs*. Venerando P. Sangalang 734
Mendoza, Heirs of Petronila Syquia,
represented by Milagros Pacis, et al. –
Heirs of Teresita Villanueva, substituted by her
legal heirs, namely: Elsa Ana Villanueva, et al. *vs*. 172
Mindanao Shopping Destination Corporation,
et al. *vs*. Hon. Rodrigo R. Duterte,
in his capacity as Mayor of Davao City, et al. 427
Mitsubishi Corporation-Manila Branch *vs*.
Commissioner of Internal Revenue 16
Montemayor, Jr., Sheriff IV, et al., Ricardo V. –
Eleanor Olympia-Geronilla, et al. *vs*. 1

Page

Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA-NAFLU-KMU) – Sumifru (Philippines) Corp. (surviving entity of a merger with Fresh Banana Agricultural Corporation and other corporations) *vs.* 692
NYK-Fil Ship Management, Inc. – Mario C. Madridejos *vs.* 704
Office of the Ombudsman, et al. – Edwin Granada Reyes *vs.* 106
Olympia-Geronilla, et al., Eleanor *vs.* Ricardo V. Montemayor, Jr., Sheriff IV, et al. 1
Omelio, Regional Trial Court, Davao City, Branch 14, et al., Hon. George E. – Chiquita Brands, Inc., et al. *vs.* 497
Pacayra *y* Mabutol, Wilfredo – People of the Philippines *vs.* 275
Paradigm Development Corporation of the Philippines *vs.* Bank of the Philippine Islands 539
Pardillo, Marcial M. – People of the Philippines *vs.* 911
People of the Philippines –
Anthony De Silva Cruz *vs.* 801
– Alejandro D.C. Roque *vs.* 852
– Mario Veridiano *y* Sapi *vs.* 642
People of the Philippines *vs.*
Rafael Agudo *y* Del Valle 918
Alberto Fortuna Alberca 896
Tito Amoc *y* Mambatalan 253
Pablo Luad Armodia 822
Elmer Avancena *y* Cabanela, et al. 672
Salvador Aycardo 309
Jonathan Baay *y* Falco 943
Henry Bentayo 263
Rolando Bisora *y* Lagonoy 339
Stephan Cabiles *y* Suarez *a.ka.* “Kano,” 969
Porferio Culas *y* Raga 205
Jose Cutara *y* Brix 999

Page

Jose Descartin, Jr. *y* Mercader 881
Sandy Domingo *y* Labis 1040
Blas Gaa *y* Rodriguez 860
Allan Jao *y* Calonia, et al. 1028
Godofredo Macaraig *y* Gonzales 931
Merceditas Matheus *y* Delos Reyes 626
Wilfredo Pacayra *y* Mabutol 275
Marcial M. Pardillo 911
Lorenzo Raytos *y* Espino 1007
Marlon Soriano *y* Narag 239
Richard F. Tripoli, et al. 788
Philippine Airlines, Inc. *vs.* Arjan T. Hassaram 296
Philippine Shell Petroleum Corporation, et al. –
City of Batangas, represented by Hon. Severina
Vilma Abaya, in her capacity as City Mayor
of Batangas *vs.* 566
Po, Sps. Peter L. and Victoria L. –
Sps. Roberto Aboitiz and Maria
Cristina Cabarrus *vs.* 123
Po, Sps. Peter L. and Victoria L. *vs.*
Sps. Roberto Aboitiz and Maria
Cristina Cabarrus, et al. 123
Raytos *y* Espino, Lorenzo –
People of the Philippines *vs.* 1007
Re: Anonymous Letter Complaint *vs.*
Judge Divina T. Samson, Municipal
Circuit Trial Court, Mabini-Pantukan,
Compostela Valley, et al. 384
Re: Letter-Complaint of Sylvia Adante Charging
Hon. Jane Aurora C. Lantion, Associate Justice,
Court of Appeals, Cagayan De Oro City,
and Atty. Dorothy Cajayon with "Systematic
Practices of Corruption." 369
Re: Letter of Lucena Ofendoreyes Alleging
Illicit Activities of a certain Atty. Cajayon
involving cases in the Court of Appeals,
Cagayan De Oro City 369

Page

Republic of the Philippines, et al. –
Danilo Bartolata, represented by his
Attorney-in-Fact Rebecca R. Pilot and/or
Dionisio P. Pilot *vs.* 978
Republic of the Philippines, represented
by the Department of Public Works
and Highways (DPWH) *vs.* Spouses
Senando F. Salvador and Josefina R. Salvador 742
Republic of the Philippines, represented
by the National Irrigation Administration
vs. Rolando C. Cebuan, et al. 767
Reyes, Edwin Granada *vs.* Paul Jocson Arches. 106
Reyes, Edwin Granada *vs.*
Office of the Ombudsman, et al. 106
Roque, Alejandro D.C. *vs.* People of the Philippines 852
Salvador, Spouses Senando F. and Josefina R. –
Republic of the Philippines, represented
by the Department of Public Works and
Highways (DPWH) *vs.* 742
Samson, Municipal Circuit Trial Court,
Mabini-Pantukan, Compostela Valley,
et al., Judge Divina T. – Re: Anonymous
Letter Complaint *vs.* 384
Sangalang, Venerando P. – Abigail L. Mendiola *vs.* 734
Soriano *y* Narag, Marlon –
People of the Philippines *vs.* 239
Spectrum Security Services, Inc. *vs.*
David Grave, et al. 590
Sps. Aboitiz, Roberto and Maria Cristina
Cabarrus, et al. – Sps. Peter L. Po and
Victoria L. Po 123
Sumifru (Philippines) Corp. (surviving
entity of a merger with Fresh Banana
Agricultural Corporation and other corporations)
vs. Nagkahiusang Mamumuo sa Suyapa Farm
(NAMASUFA-NAFLU-KMU) 692
Tallado, Edgardo A. – Sofronio B. Albania *vs.* 470
Tan-Sollano, et al., SACP Teresa Belinda G. –
Spouses Edwin and Greta Chua *vs.* 365

Page

Tetangco, Jr., et al., Amando M. *vs.*
Commission on Audit 459
The H.D. Lee Company, Inc. – Emerald
Garment Manufacturing Corporation *vs.* 835
The Provincial Government of Surigao
Del Sur, represented by Governor
Vicente T. Pimentel, Jr. – Edron Construction
Corporation, et al. *vs.* 347
Tripoli, et al., Richard F. –
People of the Philippines *vs.* 788
Urios College (Now Father Saturnino
Urios University) and/or Fr. John
Christian U. Young – Yolanda T. Bravo *vs.* 603
Veridiano *y* Sapi, Mario *vs.*
People of the Philippines 642
Villanueva, Heirs of Teresita, substituted
by her legal heirs, namely: Elsa Ana
Villanueva, et al. *vs.* Heirs of Petronila
Syquia Mendoza, represented by
Milagros Pacis, et al. 172
Xlibris *a.k.a.* Author Solutions, Inc., et al. –
Ramon Manuel T. Javines *vs.* 872

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. P-17-3676. June 5, 2017]
(Formerly OCA IPI No. 12-3985-P)

ELEANOR OLYMPIA-GERONILLA and EMMA OLYMPIA GUTIERREZ, represented by ATTY. BEATRIZ O. GERONILLA-VILLEGAS, *complainants, vs.* **RICARDO V. MONTEMAYOR, JR., SHERIFF IV and ATTY. LUNINGNING CENTRON, CLERK OF COURT VI and EX-OFFICIO SHERIFF**, *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; RESPONDENT SHERIFF IS LIABLE FOR DERELICTION OF HIS DUTY ON ACCOUNT OF HIS FAILURE AND REFUSAL TO ENFORCE THE WRIT OF EXECUTION AND THE WRIT OF DEMOLITION.—** Sheriff Montemayor's mandated task was to implement the MCTC's Decision in favor of complainants. However, instead of doing so, he substituted his own judgment and acted on his own belief that a specific portion of the subject property should be excluded from the execution. He refused to demolish the house of defendant Aceveda and vehemently insisted that the subject property must first be resurveyed, unduly causing delay in the implementation of the MCTC Decision, to the prejudice of the prevailing parties, *i.e.*, the complainants. Sheriff Montemayor's failure to enforce the alias writ of execution and writ of demolition clearly renders him liable for

dereliction of duty. He overstepped his authority and conveniently overlooked the ministerial nature of a sheriffs duty in the execution of judgments. Instead of enforcing the MCTC's orders, he exercised his discretion and supplanted his own judgment for that of the court's. To reiterate, the duty of a sheriff to execute a writ is purely ministerial, and he has no discretion to delay the execution thereof. Absent any instruction by a court to the contrary, he is mandated to proceed with reasonable celerity and promptness in implementing the writ. If for any reason, he cannot do so in part or in full, his duty is outlined in Section 14, Rule 39 of the Rules of Court which, unfortunately, he likewise failed to observe.

2. **ID.; ID.; ID.; ID.; RECEIVING MONEY FROM A PARTY WITHOUT THE APPROVAL OF THE COURT IS TANTAMOUNT TO UNLAWFUL EXACTION FOR WHICH HE MUST BE HELD LIABLE FOR GRAVE MISCONDUCT AND DISHONESTY.—** As regards the amount of ₱15,000.00 that Sheriff Montemayor had admittedly received from complainants as additional expenses for the cancelled demolition and which he claimed had been distributed among the Mangyans who voluntarily vacated the premises, the Court concurs with the OCA's finding that the said money was beyond the ambit of allowable fees that a sheriff may receive in the implementation of writs. x x x Indisputably, the sum of ₱15,000.00 received by Sheriff Montemayor without the approval of the court cannot be considered as lawful sheriff's fees. As such, his receipt thereof is tantamount to an unlawful exaction for which he must be held liable for grave misconduct and dishonesty. A sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such supposed expense and without rendering an accounting constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.

3. **ID.; ID.; ID.; ID.; ID.; GRAVE MISCONDUCT, DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE ARE GRAVE OFFENSES; PROPER PENALTY; IN VIEW OF RESPONDENT'S PREVIOUS DISMISSAL, THE COURT IMPOSED THE PENALTY OF FINE.—** Grave misconduct and dishonesty are

grave offenses each punishable by dismissal on the first offense under Section 46 (A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension for six (6) months and one (1) day to one (1) year, and dismissal on the second offense. However, as records show that Sheriff Montemayor had been previously meted the penalty of dismissal, the Court instead imposes on him the penalty of fine in the amount of ₱40,000.00, which amount shall be deducted from the monetary value of his accrued credit leaves, if sufficient; otherwise, he shall pay the amount directly to the Court.

4. **ID.; ID.; ID.; CLERK OF COURT; FAILURE TO TAKE A MORE DECISIVE ACTION AGAINST A SHERIFF'S UNWARRANTED REFUSAL TO ENFORCE THE DECISION CONSTITUTES SIMPLE NEGLECT OF DUTY.—** Atty. Centron should be held administratively liable for her failure to take a more decisive action against Sheriff Montemayor's unwarranted refusal to enforce the MCTC Decision in favor of complainants. Although she may have advised and/or reminded him with respect to the performance of his duties, her apparently lackadaisical attitude in this matter evinces a similar failure on her part to perform her duty of effectively supervising him. Moreover, instead of taking Sheriff Montemayor's stance that a resurvey should be conducted on the subject property based on his groundless belief that a portion thereof should be excluded from the judgment, she should have firmly reminded him of his mandated ministerial task of implementing writs promptly and expeditiously, and that he had no discretion with regard to the merits of the judgment. Atty. Centron's failure in this respect renders her administratively liable for simple neglect of duty.

5. **ID.; ID.; ID.; ID.; ID.; PROPER PENALTY; THE COURT IMPOSED THE PENALTY OF FINE INSTEAD OF SUSPENSION IN ORDER TO PREVENT ANY ADVERSE EFFECT ON PUBLIC SERVICE WHICH WOULD ENSUE IF THE WORK BE LEFT UNATTENDED BY REASON OF RESPONDENT'S SUSPENSION.—** Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference, a less grave offense

punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense under Section 46 (D) of the RRACCS. However, the Court, in several cases, imposed the penalty of fine in lieu of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Therefore, the Court imposes on Atty. Centron the penalty of fine in the amount of ₱10,000.00, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.

APPEARANCES OF COUNSEL

Beatriz O. Geronilla-Villegas for complainants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from a verified Complaint-Affidavit[1] dated October 15, 2012 for dereliction of duty, serious misconduct, negligence, dishonesty, and conduct prejudicial to the service filed by complainants Eleanor Olympia-Geronilla and Emma Olympia-Gutierrez, represented by Atty. Beatriz O. Geronilla-Villegas (complainants) against respondents Sheriff Ricardo V. Montemayor, Jr. (Sheriff Montemayor) and Clerk of Court Atty. Luningning Y. Centron (Atty. Centron; respondents), both from the Office of the Clerk of Court of the Regional Trial Court (OCC-RTC) of Calapan City, Oriental Mindoro.

The Facts

Complainants alleged that they are the plaintiffs in an ejectment case entitled "*Eleanor Olympia and Emma Olympia v. Carlito Aceveda and Tolentino Malinao*," docketed as Civil Case No. 327 (ejectment case) filed before the First Municipal

---

[1] *Rollo*, pp. 1-23.

Circuit Trial Court, Province of Oriental Mindoro (MCTC).[2] On October 29, 2004, Judge Edgardo M. Padilla (Judge Padilla) of the MCTC rendered a Decision[3] in favor of complainants, directing defendants therein Carlito T. Aceveda (Aceveda), Tolentino Malinao (Malinao; defendants), and all persons claiming rights under them to: (*a*) vacate the property subject of the dispute; (*b*) remove whatever structures they may have erected thereon, at their own expense; (*c*) pay complainants ₱50,000.00 every four (4) months beginning November 2002 as reasonable compensation for the value of the crops being appropriated by defendants until they surrender possession to complainants; and (*d*) pay ₱30,000.00 as attorney's fees and costs of suit.[4]

In view of the MCTC's favorable decision, complainants filed a Motion for Immediate Execution thereof; on the other hand, defendants appealed to the Regional Trial Court of Calapan City, Branch 40 (RTC).[5]

Meanwhile, on July 1, 2005, the MCTC issued a Writ of Execution[6] directing the implementation of its October 29, 2004 Decision.[7]

Subsequently, in a Decision[8] dated May 4, 2007, the RTC denied defendants' appeal and affirmed the MCTC's Decision *in toto*. Defendants' motion for reconsideration was denied in an Order[9] dated May 28, 2007.[10]

Notwithstanding the RTC's affirmance of the MCTC's Decision and the issuance of a writ of execution, the judgment

---

[2] *Id*. at 1.

[3] *Id*. at 24-33.

[4] *Id*. at 2. See also pp. 32-33.

[5] *Id*. at 2.

[6] *Id*. at 34-36.

[7] *Id*. at 2.

[8] *Id*. at 37-48. Penned by Judge Tomas C. Leynes.

[9] *Id*. at 49.

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

in favor of the complainants remained unsatisfied. Thus, they filed an Urgent Motion for Issuance of Alias Writ of Execution, which the MCTC granted. An alias writ of execution[11] was issued on July 29, 2010.[12]

Aceveda refused to vacate the premises despite the issuance of the alias writ of execution. Upon Sheriff Montemayor's instruction, complainants filed a motion for the issuance of a Writ of Demolition, which the MCTC granted. On May 20, 2011, a Writ of Demolition[13] was issued.[14]

From the issuance of the Writ of Demolition on May 20, 2011 to November 2011, complainants consistently and religiously coordinated with Sheriff Montemayor for the enforcement of the MCTC Decision. However, the latter informed them that he could not enforce the said writ upon the portion of the property occupied by Aceveda as the same was excluded from the scope of the judgment. Sheriff Montemayor declared that Aceveda was able to produce "believable" documents from the Department of Agrarian Reform (DAR) tending to show his ownership over the portion of the land upon which he had constructed his house. Thus, Sheriff Montemayor advised complainants to conduct a resurvey to ascertain the boundaries of the property that should be included in the demolition.[15]

Complainants insisted that all issues pertaining to the subject property, particularly the portion being claimed by Aceveda, had already been settled in the ejectment case. As such, all that Sheriff Montemayor had to do was to enforce the judgment therein. Unfortunately, the latter refused to do so, prompting complainants to send a letter dated November 22, 2011 to Atty. Centron, informing her of Sheriff Montemayor's unjustified refusal to perform his duty of implementing the MCTC Decision. In the letter, complainants mentioned Sheriff Montemayor's

---

[11] *Id*. at 50-52.

[12] *Id*. at 3.

[13] *Id*. at 53-54.

[14] *Id*. at 3.

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

receipt of the amount of ₱10,000.00 allegedly as operational expenses for the intended demolition.[16]

On December 23, 2011, Sheriff Montemayor advised complainants that he had scheduled the demolition on December 27, 2011 and asked for additional funds. Acceding to the request in the hope that the favorable decision will finally be enforced, complainants gave the amount of ₱15,000.00 to Sheriff Montemayor, for which the latter signed an acknowledgment receipt.[17]

Unfortunately, the scheduled demolition did not push through because of alleged flooding in Baco, Oriental Mindoro. Nonetheless, Sheriff Montemayor assured complainants that he will undertake the demolition on January 2, 2012, which never transpired at all. Instead, he suggested that complainants secure permission from the Department of Environment and Natural Resources–Community Environment and Natural Resources Office (DENR-CENRO) to cover the improvements on the portion of the premises occupied by Aceveda. Despite the cancellation of the demolition, Sheriff Montemayor failed to return the ₱15,000.00 given to him as expenses therefor.

Complainants reported[18] the matter to Atty. Centron, who, however, failed to take appropriate action on Sheriff Montemayor's unwarranted refusal to carry out the demolition. Hence, the instant administrative case against both Sheriff Montemayor and Atty. Centron for dereliction of duty, serious misconduct, dishonesty, and conduct prejudicial to the service.

In his defense,[19] Sheriff Montemayor denied having received the amount of ₱10,000.00 as alleged operational funds for the demolition, maintaining that there was no proof of his receipt thereof other than complainants' bare allegation.[20] However, he admitted receipt of the ₱15,000.00, which he claimed was distributed as financial assistance among the Mangyans who

---

[16] *Id*. at 4.

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

[18] *Id*. at 57-62 and 63-64.

[19] *Id.* at 121-127.

[20] *Id*. at 123.

voluntarily agreed to vacate and remove their structures on the subject premises.[21] He argued that, contrary to complainants' allegation, Section 10,[22] Rule 141 of the Rules of Court on sheriff's fees did not apply in this case as the ₱15,000.00 that he received and gave as financial assistance to the Mangyans cannot be considered as sheriff's fees.[23]

As regards his refusal to demolish Aceveda's structure on the premises, he explained that he had doubts on whether Aceveda's house was truly within complainants' property. It was because of this uncertainty that he advised complainants to conduct a resurvey of the property, but they never cooperated.[24]

For her part, Atty. Centron asserted[25] that she never tolerated Sheriff Montemayor's alleged dereliction of duty nor did she fail to act on complainants' concerns after they were brought to her attention. In fact, she gave Sheriff Montemayor written directives to carry out the writ of demolition and even reminded him of the money judgment contained in the MCTC's Decision, which he must also enforce in favor of complainants. Likewise, in light of Sheriff Montemayor's advice to conduct a resurvey,

---

[21] *Id.*

[22] **Section 10**. *Sheriffs, Process Servers and other persons serving processes.* –

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

[23] *Rollo*, p. 124.

[24] *Id*. at 125.

[25] *Id*. at 84-87.

Atty. Centron sought complainants' cooperation by asking that they provide a surveyor for the expeditious resolution of the matter.[26]

Atty. Centron pointed out that the delays attendant to the demolition were caused by Sheriff Montemayor's belief that Acevedo's house was not within the property of complainants, at the same time maintaining that he (Sheriff Montemayor) never deliberately intended to obstruct or cause such delay.[27]

The Report and Recommendation of the Office of the Court Administrator

In its Report[28] dated January 13, 2017, the Office of the Court Administrator (OCA) recommended, *inter alia*, that Sheriff Montemayor be found guilty of dereliction of duty, grave misconduct, and dishonesty, and fined in the amount of ₱40,000.00 in view of his previous dismissal from the service. Likewise, the OCA recommended that Atty. Centron be held liable for simple neglect of duty and fined in the amount of ₱10,000.00, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.[29]

In its evaluation, the OCA held that Sheriff Montemayor exceeded his authority and substituted his own judgment when he deferred the implementation of the writ of demolition based on his own belief that the property in dispute had to be resurveyed, forgetting that a sheriff has no discretion on whether to execute a judgment or not. Neither can he choose as to which portion of a property should be included or excluded in the execution.[30]

With respect to his receipt of the aggregate amount of ₱25,000.00 from complainants, the OCA found no proof that

---

[26] *Id.*

[27] *Id.* at 87.

[28] *Id*. at 155-168. Issued by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and Chief of Office (OCA), Legal Office Wilhelmina D. Geronga.

[29] *Id*. at 168.

[30] *Id.* at 163-164.

Sheriff Montemayor indeed received the initial amount of ₱10,000.00. With regard, however, to the amount of ₱15,000.00 which he *admittedly* received, the OCA did not give credence to his allegation that the said amount was distributed to the Mangyans. Instead, it found him liable for violation of the procedural steps that sheriffs are mandated to comply with relative to the fees and expenses in implementing court processes, pursuant to Section 10, Rule 141 of the Rules of Court. In particular, Sheriff Montemayor did not secure court approval with respect to the ₱15,000.00 he admittedly received, which is tantamount to an unlawful exaction, thereby making him administratively liable.[31]

In sum, the OCA found Sheriff Montemayor liable for dereliction of duty on account of his failure and refusal to enforce the writ of execution and writ of demolition. For demanding and receiving money without court approval in violation of Section 10, Rule 141 of the Rules of Court, he is liable as well for grave misconduct and dishonesty, for which the prescribed penalty is dismissal. However, in light of his previous dismissal from the service,[32] the OCA recommended that he instead be fined in the amount of ₱40,000.00, which shall be deducted from the monetary value of his accumulated leave credits, if sufficient; otherwise, he shall pay said amount directly to the Court.[33]

Similarly, the OCA found Atty. Centron remiss in the performance of her duties as Clerk of Court in view of her failure to effectively supervise Sheriff Montemayor in carrying

---

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

[32] In a Decision dated August 2, 2016, the Court *En Banc*, in A.M. No. P-13-3113, formerly OCA-I.P.I. No. 12-3815-P entitled "*Rosemarie Gerdtman, represented by her sister and Attorney-in-fact, Rosaline Lopez Bunquin v. Ricardo V. Montemayor, Jr. x x x*," ***dismissed*** Sheriff Montemayor from the service for grave misconduct, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government or any of its subdivisions, instrumentalities, or agencies, including government-owned and controlled corporations.

[33] *Rollo*, pp. 166-167.

out his tasks. While it may be true that she had called his attention by directing and/or reminding him to enforce the writ of demolition in this case, her failure to effectively address the matter that complainants had brought to her attention makes her liable for simple neglect of duty, for which the OCA recommended the alternative penalty of fine in the amount of ₱10,000.00 in lieu of suspension to prevent undue adverse effect on public service.[34]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not respondents Sheriff Montemayor and Atty. Centron should be held administratively liable, as recommended by the OCA.

The Court's Ruling

The Court concurs with the findings and conclusions of the OCA.

In *Lucas v. Dizon*, [35] the Court declared:

> The last standing frontier that the victorious litigant must face is often another difficult process – the execution stage. In this stage, a litigant who has won the battle might lose the war. Thus, the sheriffs, being agents of the court, play an important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] "are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their **mandated ministerial duty to implement writs promptly and expeditiously**. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."[36] (Emphasis supplied)

---

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

[35] 747 Phil. 88 (2014).

[36] *Id*. at 95-96, citing *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*, 386 Phil. 88, 92-93 (2000), cited in *Gonzales v. Cerenio*, 564 Phil. 295, 302-303 (2007).

Engraved in jurisprudence is the rule that the sheriff's duty in the execution of a writ is *purely ministerial*. Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules.[37]

In this case, Sheriff Montemayor's mandated task was to implement the MCTC's Decision in favor of complainants. However, instead of doing so, he substituted his own judgment and acted on his own belief that a specific portion of the subject property should be excluded from the execution. He refused to demolish the house of defendant Aceveda and vehemently insisted that the subject property must first be resurveyed, unduly causing delay in the implementation of the MCTC Decision, to the prejudice of the prevailing parties, *i.e.,* the complainants.

Sheriff Montemayor's failure to enforce the alias writ of execution and writ of demolition clearly renders him liable for dereliction of duty. He overstepped his authority and conveniently overlooked the ministerial nature of a sheriff's duty in the execution of judgments. Instead of enforcing the MCTC's orders, he exercised his discretion and supplanted his own judgment for that of the court's. To reiterate, the duty of a sheriff to execute a writ is purely ministerial, and he has no discretion to delay the execution thereof. Absent any instruction by a court to the contrary, he is mandated to proceed with reasonable celerity and promptness in implementing the writ.[38] If for any reason, he cannot do so in part or in full, his duty is outlined in Section 14,[39] Rule 39 of the Rules of Court which, unfortunately, he likewise failed to observe.

---

[37] *Id.,* citing *Guerrero-Boylon v. Boyles*, 674 Phil. 565 (2011) and *Anico v. Pilipiña*, 670 Phil. 460, 470 (2011).

[38] *Garcera II v. Parrone*, 502 Phil. 8, 12 (2005).

[39] **SEC. 14**. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the

As regards the amount of ₱15,000.00 that Sheriff Montemayor had admittedly received from complainants as additional expenses for the cancelled demolition and which he claimed had been distributed among the Mangyans who voluntarily vacated the premises, the Court concurs with the OCA's finding that the said money was beyond the ambit of allowable fees that a sheriff may receive in the implementation of writs. Moreover, Sheriff Montemayor failed to observe the following procedure laid down in Section 10, Rule 141 of the Rules of Court with respect to sheriff's expenses: (1) the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process; (2) the requesting party shall deposit such amount with the Clerk of Court and *Ex-Officio* Sheriff, who shall disburse the same to the executing sheriff subject to his liquidation within the same period for rendering a return on the process or writ; and (3) any unspent amount shall be refunded to the requesting party who made the deposit.

Indisputably, the sum of ₱15,000.00 received by Sheriff Montemayor without the approval of the court cannot be considered as lawful sheriff's fees. As such, his receipt thereof is tantamount to an unlawful exaction for which he must be held liable for grave misconduct and dishonesty.[40] A sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such supposed expense and without rendering an accounting constitutes dishonesty and extortion and falls short of the required standards of public

---

reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

[40] *Beltran v. Monteroso*, 593 Phil. 413 (2008), citing *De Guzman, Jr. v. Mendoza*, 493 Phil. 690 (2005); *Adoma v. Gatcheco*, 489 Phil. 273 (2005); and *Tan v. Dela Cruz, Jr.*, 482 Phil. 782 (2004).

service. Such conduct threatens the very existence of the system of administration of justice.[41]

Grave misconduct and dishonesty are grave offenses each punishable by dismissal on the first offense under Section 46 (A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).[42] Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension for six (6) months and one (1) day to one (1) year, and dismissal on the second offense. However, as records show that Sheriff Montemayor had been previously meted the penalty of dismissal,[43] the Court instead imposes on him the penalty of fine in the amount of ₱40,000.00, which amount shall be deducted from the monetary value of his accrued credit leaves, if sufficient; otherwise, he shall pay the amount directly to the Court.

Similarly, Atty. Centron should be held administratively liable for her failure to take a more decisive action against Sheriff Montemayor's unwarranted refusal to enforce the MCTC Decision in favor of complainants. Although she may have advised and/or reminded him with respect to the performance of his duties, her apparently lackadaisical attitude in this matter evinces a similar failure on her part to perform her duty of effectively supervising him. Moreover, instead of taking Sheriff Montemayor's stance that a resurvey should be conducted on the subject property based on his groundless belief that a portion thereof should be excluded from the judgment, she should have firmly reminded him of his mandated ministerial task of implementing writs promptly and expeditiously, and that he had no discretion with regard to the merits of the judgment. Atty. Centron's failure in this respect renders her administratively liable for simple neglect of duty.

---

[41] *Beltran v. Monteroso*, *id*. at 417.

[42] Promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 8, 2011.

[43] See footnote 32.

Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference,[44] a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense under Section 46 (D) of the RRACCS. However, the Court, in several cases,[45] imposed the penalty of fine in lieu of suspension as an alternative penalty in order to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Therefore, the Court imposes on Atty. Centron the penalty of fine in the amount of ₱10,000.00, with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.

WHEREFORE, respondent Ricardo V. Montemayor, Jr., Sheriff IV of the Office of the Clerk of Court, Regional Trial Court, Calapan City, Oriental Mindoro is found **GUILTY** of dereliction of duty, grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service. In view of his previous dismissal from the service, he is **FINED** in the amount of ₱40,000.00, to be deducted from the monetary value of his accumulated leave credits, if sufficient; otherwise, he is ordered to pay the said amount directly to the Court. Likewise, respondent Atty. Luningning Y. Centron, Clerk of Court VI of the same office is found **GUILTY** of simple neglect of duty and **FINED** in the amount of ₱10,000.00 and **STERNLY WARNED** that a repetition of the same or any similar act shall be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

---

[44] *Miranda v. Raymundo, Jr.,* A.M. No. P-13-3163, December 1, 2014, 743 SCRA 343, 349.

[45] *Mendoza v. Esguerra*, 703 Phil. 435 (2013); *Zamudio v. Auro*, 593 Phil. 575, 584 (2008).

FIRST DIVISION

[G.R. No. 175772.* June 5, 2017]

MITSUBISHI CORPORATION – MANILA BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

SYLLABUS

1. **TAXATION; TAX REFUND; PETITIONER IS ENTITLED TO THE REFUND OF ERRONEOUSLY PAID INCOME TAX AND BRANCH PROFIT REMITTANCE TAX; SINCE THE PHILIPPINE GOVERNMENT ASSUMED THE OBLIGATION TO PAY SAID TAXES BY VIRTUE OF ITS EXCHANGE OF NOTES WITH THE JAPANESE GOVERNMENT, IT IS THE PHILIPPINE GOVERNMENT, THROUGH THE NATIONAL POWER CORPORATION (NPC), WHICH SHOULD SHOULDER THE PAYMENT OF THE SAME.—** [I]t is fairly apparent that the subject taxes in the amount of ₱52,612,812.00 was erroneously collected from petitioner, considering that the obligation to pay the same had already been assumed by the Philippine Government by virtue of its Exchange of Notes with the Japanese Government. Case law explains that an exchange of notes is considered as an **executive agreement**, which is binding on the State even without Senate concurrence. x x x As explicitly worded, the Philippine Government, through its executing agencies (*i.e.*, NPC in this case) particularly assumed "all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the [OECF] Loan." The Philippine Government's assumption of "all fiscal levies and taxes," which includes the subject taxes, is clearly a form of concession given to Japanese suppliers, contractors or consultants in consideration of the OECF Loan, which proceeds were used for the implementation of the Project. As part of this, NPC entered into the June 21, 1991 Contract with Mitsubishi Corporation

* Part of the Supreme Court's Case Decongestion Program.

(*i.e.*, petitioner's head office in Japan) for the engineering, supply, construction, installation, testing, and commissioning of a steam generator, auxiliaries, and associated civil works for the Project, which foreign currency portion was funded by the OECF loans. Thus, in line with the tax assumption provision under the Exchange of Notes, Article VIII (B) (1) of the Contract states that NPC shall pay any and all forms of taxes that are directly imposable under the Contract[.] x x x Therefore, considering that petitioner paid the subject taxes in the aggregate amount of ₱52,612,812.00, which it was not required to pay, the BIR erroneously collected such amount. Accordingly, petitioner is entitled to its refund.

2. **ID.; ID.; ID.; PETITIONER CORRECTLY FILED ITS CLAIM FOR TAX REFUND TO RECOVER THE ERRONEOUSLY PAID TAXES FROM THE BUREAU OF INTERNAL REVENUE WHICH HAS A RECOURSE TO COLLECT THE SAME FROM THE NPC.—** [P]etitioner correctly filed its claim for tax refund under Sections 204 and 229 of the NIRC to recover the erroneously paid taxes amounting to ₱44,288,712.00 as income tax and ₱8,324,100.00 as BPRT from the BIR. To reiterate, petitioner's entitlement to the refund is based on the tax assumption provision in the Exchange of Notes. Given that this is a case of tax assumption and not an exemption, the BIR is, therefore, not without recourse; it can properly collect the subject taxes from the NPC as the proper party that assumed petitioner's tax liability.

APPEARANCES OF COUNSEL

Salvador Llanillo & Bernardo for petitioner.
The Solicitor General for respondent.

DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 24, 2006 and the Resolution[3] dated December 4, 2006 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 5, reversing the CTA Division's ruling in CTA Case No. 6139 En Banc reverseding the CTA Division's ruling[4] in CTA Case No. 6139 which granted the claim for refund of erroneously paid income tax and branch profit remittance tax (BPRT; collectively, subject taxes) filed by petitioner Mitsubishi Corporation – Manila Branch (petitioner) for the fiscal year that ended on March 31, 1998.

The Facts

On June 11, 1987, the governments of Japan and the Philippines executed an Exchange of Notes,[5] whereby the former agreed to extend a loan amounting to Forty Billion Four Hundred Million Japanese Yen (¥40,400,000,000) to the latter through the then Overseas Economic Cooperation Fund (OECF, now Japan Bank for International Cooperation) for the implementation of the Calaca II Coal-Fired Thermal Power Plant Project (Project).[6] In Paragraph 5 (2) of the Exchange of Notes, the

---

[1] *Rollo*, pp. 10-85.

[2] *Id.* at 93-115. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova, and Olga Palanca-Enriquez concurring; Associate Justice Lovell R. Bautista, dissenting (*id.* at 116-131); and Presiding Justice Ernesto D. Acosta concurring and dissenting.

[3] *Id.* at 132-139.

[4] *Id.* at 152-165. See Decision dated December 17, 2003 penned by Presiding Justice Ernesto D. Acosta with Associate Justice Lovell R. Bautista concurring and Associate Judstice Juanito C. Castañeda, Jr. dissenting (*id.* at 166-172).

[5] Not attached to the *rollo*.

[6] *Rollo*, p. 94.

Philippine Government, by itself or through its executing agency, undertook to **assume all taxes imposed by the Philippines on Japanese contractors engaged in the Project**:,

(2) The **Government of the Republic of the Philippines will, *itself* or *through its executing agencies*** or instrumentalities, **assume all fiscal levies or taxes** imposed in the Republic of the Philippines *on Japanese firms and nationals operating as suppliers, contractors or consultants* on and/or in connection with *any income* that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the Loan.[7] (Emphases, underscoring, and italics supplied)

Consequently, the OECF and the Republic of the Philippine Governments entered into Loan Agreement No. PH-P76[8] dated September 25, 1987 for Forty Billion Four Hundred Million Japanese Yen (¥40,400,000,000). Due to the need for additional funding for the Project, they also executed Loan Agreement No. PH-P141[9] dated December 20, 1994 for Five Billion Five Hundred Thirteen Million Japanese Yen (¥5,513,000,000).[10]

Meanwhile, on June 21, 1991, the National Power Corporation (NPC), as the executing government agency, entered into a contract with Mitsubishi Corporation, (*i.e.*, petitioner's head office in Japan), for the engineering, supply, construction, installation, testing, and commissioning of a steam generator, auxiliaries, and associated civil works for the Project (Contract).[11] The Contract's foreign currency portion was funded by the OECF loans.[12] In line with the Exchange of Notes, Article VIII (B)

---

[7] *Id*. at 11 and 117.

[8] *Id*. at 304-313.

[9] *Id*. at 336-344.

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

[11] *Id.* at 94-95 and 117.

[12] Article VI of the Contract provided that the foreign currency portion of the contract price for Phase 1 is funded by the OECF Loan No. PH-P76. Any foreign currency portion of the Contract which is not covered by the first loan

(1) of the Contract indicated NPC's undertaking to pay any and all forms of taxes that are directly imposable under the Contract:

Article VIII (B) (1)

B. FOR ONSHORE PORTION.

1.)[The] CORPORATION **(NPC) shall**, subject to the provisions under the Contract [Document] on Taxes, **pay any and all forms of taxes** which are directly imposable under the Contract including VAT, that may be imposed by the Philippine Government, or any of its agencies and political subdivisions.[13] (Emphases supplied)

Petitioner completed the project on December 2, 1995, but it was only accepted by NPC on January 31, 1998 through a Certificate of Completion and Final Acceptance.[14]

On July 15, 1998, petitioner filed its Income Tax Return for the fiscal year that ended on March 31, 1998 with the Bureau of Internal Revenue (BIR). Petitioner included in its income tax due[15] the amount of ₱44,288,712.00, representing income from the OECF-funded portion of the Project.[16] On the same day, petitioner also filed its Monthly Remittance Return of Income Taxes Withheld and remitted ₱8,324,100.00 as BPRT for branch profits remitted to its head office in Japan out of its income for the fiscal year that ended on March 31, 1998.[17]

On June 30, 2000, petitioner filed with the respondent Commissioner on Internal Revenue (CIR) an administrative claim

---

shall constitute as Phase II of the Contract. NPC undertook to secure additional funding from OECF for Phase II; hence, Republic of the Philippines entered into the second loan agreement with OECF (*id* at. 153).

[13] *Id*. at 420-421.

[14] *Id*. at 95.

[15] The reported total income tax due was ₱90,481,711.00. See *id*.

[16] See *id*. at 144-145.

[17] A ten percent (10%) tax rate was used in accordance with the Philippines-Japan Tax Treaty. *Id*. at 95.

for refund of Fifty Two Million Six Hundred Twelve Thousand, Eight Hundred Twelve Pesos (₱52,612,812.00), representing the erroneously paid amounts of ₱44,288,712.00 as income tax and ₱8,324,100.00 as BPRT corresponding to the OECF-funded portion of the Project.[18] To suspend the running of the two-year period to file a judicial claim for refund, petitioner filed on July 13, 2000 a petition for review[19] before the CTA pursuant to Section 229 of the National Internal Revenue Code (NIRC), which was docketed as C.T.A. Case No. 6139.[20] Petitioner anchored its claim for refund on BIR Ruling No. DA-407-98 dated September 7, 1998,[21] which interpreted paragraph 5 (2) of the Exchange of Notes, to wit:

> In reply, please be informed that the aforequoted provisions of Notes-NAIA and Notes-Calaca are not grants of direct tax exemption privilege to Japanese firms, Mitsubishi in this case, and Japanese nationals operating as suppliers, contractors or consultants involved in either of the two projects because the said provisions state that it is the Government of the Republic of the Philippines that is obligated to pay whatever fiscal levies or taxes they may be liable to. Thus, there is no tax exemption to speak of because the said taxes shall be assumed by the Philippine Government; hence, the said provision is not violative of the Constitutional prohibition against the grants of tax exemption without the concurrence of the majority of the members of Congress. (Citation omitted)
>
> In view thereof, x x x, this office is of the opinion and hereby holds that **Mitsubishi has no liability for income tax and other taxes and fiscal levies**, including VAT, on the 75% of the NAIA II Project and on the 100% of the foreign currency portion of the Calaca

---

[18] *Id*. at 157.

[19] Dated July 12, 2000. *Id*. at 142-147.

[20] *Id*. at 157. The CTA Division commissioned Mr. Ruben R. Rubio, a partner of Sycip Gorres Velayo & Co., to examine and verify the voluminous documents supporting petitioner's claim. Mr. Rubio submitted a report revealing erroneously paid income tax and branch profit remittance tax amount ing to ₱44,288,712.00 and ₱8,324,100.00. The CTA Division noted that this finding is consistent with petitioner's claims. *Id.* at 157-158.

[21] See *id.* at 158-160 and 427-428.

II Project **since the said taxes were assumed by the Philippine Government**.[22] (Emphases and underscoring supplied)

In a Decision[23] dated December 17, 2003, the CTA Division granted the petition and ordered the CIR to refund to petitioner the amounts it erroneously paid as income tax and BPRT.[24] It held that based on the Exchange of Notes, the Philippine Government, through the NPC as its executing agency, bound itself to assume or shoulder petitioner's tax obligations. Therefore, petitioner's payments of income tax and BPRT to the CIR, when such payments should have been made by the NPC, undoubtedly constitute erroneous payments under Section 229 of the NIRC.[25]

The CTA Division acknowledged that based on Revenue Memorandum Circular (RMC) No. 42-99 dated June 2, 1999, amending RMC No. 32-99, the proper remedy for a Japanese contractor who previously paid the taxes directly to the BIR is to recover or obtain a refund from the government executing agency — the NPC in this case. It held, however, that RMC No. 42-99 does not apply to petitioner as it filed its ITR on July 15, 1998 or almost a year before the issuance of the same. It added that RMC No. 42-99 cannot be given retroactive effect as it would be unfair to petitioner.[26]

The CIR moved for reconsideration[27] but was denied in a Resolution[28] dated April 23, 2004; thus, the CIR elevated the matter to the CTA *En Banc*.[29]

---

[22] *Id*. at 160.

[23] *Id.* at 152-165.

[24] The CTA Division held that petitioner substantiated its claim of erroneous payment of income tax and BPRT for the year ended March 31, 1998. *Id.* at 165.

[25] See *id*. at 161-162.

[26] See *id*. at 163-165.

[27] See motion for reconsideration dated December 30, 2003; *id*. at 173-180.

[28] Not attached to the *rollo*.

[29] See petition for review dated May 11, 2004; *rollo*, pp. 181-195.

The CTA *En Banc*'s Ruling

In a Decision[30] dated May 24, 2006, the CTA *En Banc* reversed the CTA Division's rulings and declared that petitioner is not entitled to a refund of the taxes it paid to the CIR. It held that, *first,* petitioner failed to establish that its tax payments were "erroneous" under the law to justify the refund, adding that the CIR has no power to grant a refund under Section 229 of the NIRC absent any tax exemption. It further observed that by its clear terms, the Exchange of Notes granted no tax exemption to petitioner.[31] *Second,* the Exchange of Notes cannot be read as a treaty validly granting tax exemption considering the lack of Senate concurrence as required under Article VII, Section 21 of the Constitution.[32] *Third,* RMC No. 42-99, which was already in effect when petitioner filed its administrative claim for refund on June 30, 2000, specifies petitioner's proper remedy – that is, to recover the subject taxes from NPC, and not from the CIR.[33]

Petitioner sought reconsideration,[34] but the CTA *En Banc* denied the motion in a Resolution[35] dated December 4, 2006; hence, this petition.

The Issues Before the Court

The issues before the Court are two-fold: (*a*) whether petitioner is entitled to a refund; and (*b*) if in the affirmative, from which government entity should the refund be claimed.

The Court's Ruling

The petition is meritorious.

---

[30] *Id*. at 93-115.

[31] See *id*. at 99-102.

[32] See *id*. at 102-108.

[33] See *id*. at 109-110.

[34] Not attached to the *rollo.*

[35] *Rollo*, pp. 132-139.

I.

Sections 204 (C) of the NIRC grants the CIR the authority to credit or refund taxes which are erroneously collected by the government:[36]

SEC. 204. ***Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*** The Commissioner may —

x x x x x x x x x

(C) Credit or **refund taxes erroneously or illegally received** or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x (Emphases and underscoring supplied)

The authority of the CIR to refund erroneously collected taxes is likewise reflected in Section 229 of the NIRC, which reads:

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."

x x x (Emphases and underscoring supplied)

---

[36] See *CBK Power Company Limited v. CIR*, G.R. Nos. 193383-94 and 193407-08, January 14, 2015, 746 SCRA 93, 108.

In this case, it is fairly apparent that the subject taxes in the amount of ₱52,612,812.00 was erroneously collected from petitioner, considering that the obligation to pay the same had already been assumed by the Philippine Government by virtue of its Exchange of Notes with the Japanese Government. Case law explains that an exchange of notes is considered as an **executive agreement**, which is binding on the State even without Senate concurrence. In *Abaya v. Ebdane*:[37]

An "exchange of notes" is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

It is stated that "treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, *modus vivendi* and exchange of notes" all refer to "international instruments binding at international law."

x x x x x x x x x

Significantly, an exchange of notes is considered a form of an executive agreement, which becomes binding through executive action without the need of a vote by the Senate or Congress.[38]

Paragraph 5 (2) of the Exchange of Notes provides for a **tax assumption provision** whereby:

(2) The **Government of the Republic of the Philippines will, *itself* or *through its executing agencies*** or instrumentalities, **assume all fiscal levies or taxes** imposed in the Republic of the Philippines *on Japanese firms and nationals operating as suppliers, contractors or consultants* on and/or in

---

[37] 544 Phil. 645 (2007).

[38] *Id*. at 690-691.

> connection with *any income* that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the Loan. (Emphases and underscoring supplied)

To "assume" means "[t]o take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability."[39] This means that the obligation or liability remains, although the same is merely passed on to a different person. In this light, the concept of an assumption is therefore different from an exemption, the latter being the "[f]reedom from a duty, liability or other requirement" or "[a] privilege given to a judgment debtor by law, allowing the debtor to retain [a] certain property without liability."[40] Thus, contrary to the CTA *En Banc*'s opinion, the constitutional provisions on tax exemptions would not apply.

As explicitly worded, the Philippine Government, through its executing agencies (*i.e.*, NPC in this case) particularly assumed "all fiscal levies or taxes imposed in the Republic of the Philippines on Japanese firms and nationals operating as suppliers, contractors or consultants on and/or in connection with any income that may accrue from the supply of products of Japan and services of Japanese nationals to be provided under the [OECF] Loan." The Philippine Government's assumption of "all fiscal levies and taxes," which includes the subject taxes, is clearly a form of concession given to Japanese suppliers, contractors or consultants in consideration of the OECF Loan, which proceeds were used for the implementation of the Project. As part of this, NPC entered into the June 21, 1991 Contract with Mitsubishi Corporation (*i.e.*, petitioner's head office in Japan) for the engineering, supply, construction, installation, testing, and commissioning of a steam generator, auxiliaries, and associated civil works for the Project,[41] which foreign

---

[39] *Black's Law Dictionary*, 6th Ed., p. 122. See also *rollo*, p. 161.

[40] *Black's Law Dictionary*, 8th Ed., p. 612.

[41] *Rollo*, pp. 94-95 and 117.

currency portion was funded by the OECF loans.[42] Thus, in line with the tax assumption provision under the Exchange of Notes, Article VIII (B) (1) of the Contract states that NPC shall pay any and all forms of taxes that are directly imposable under the Contract:

Article VIII (B) (1)

B. FOR ONSHORE PORTION.

1.) [The] CORPORATION **(NPC) shall**, subject to the provisions under the Contract [Document] on Taxes, **pay any and all forms of taxes** which are directly imposable under the Contract including VAT, that may be imposed by the Philippine Government, or any of its agencies and political subdivisions.[43] (Emphases supplied)

This notwithstanding, petitioner included in its income tax due the amount of ₱44,288,712.00, representing income from the OECF-funded portion of the Project, and further remitted ₱8,324,100.00 as BPRT for branch profits remitted to its head office in Japan out of its income for the fiscal year that ended on March 31, 1998.[45] These taxes clearly fall within the ambit of the tax assumption provision under the Exchange of Notes, which was further fleshed out in the Contract. Hence, it is the Philippine Government, through the NPC, which should shoulder the payment of the same.

It bears stressing that the CIR had already acknowledged, through its administrative issuances, that Japanese contractors involved in the Project are not liable for the subject taxes. In RMC No. 42-99, the CIR interpreted the effect of the tax assumption clause in the Exchange of Notes on petitioner's tax liability, to wit:

---

[42] *Id*. at 153.

[43] *Id*. at 420-421.

[44] Executive Order No. 292, Administrative Code of 1987, Sec. 2(1).

[45] *Id*. at 95.

The foregoing provisions of the Exchange of Notes mean that the Japanese contractors or nationals engaged in EOCF-funded projects in the Philippines **shall not be required to shoulder all fiscal levies or taxes associated with the project**. x x x

x x x x x x x x x

x x x Since the executing government agencies are mandated to assume the payment of [income taxes] under the Exchange of Notes, the said Japanese firms or nationals **need not pay taxes due thereunder**.[46] (Emphases and underscoring supplied)

The CIR subsequently affirmed petitioner's non-liability for taxes and entitlement to tax refunds by issuing Revenue Memorandum Order (RMO) No. 24-2005[47] addressed to specified BIR offices. The RMO provides:

Pursuant to the provisions of [RMC] No. 32-99 as amended by RMC No. 42-99, Japanese contractors and nationals engaged in OECF-funded projects in the Philippines **shall not be required to shoulder** the fiscal levies or **taxes associated with the project.** Thus, the concerned Japanese contractors are **entitled to claim for the refund of all taxes paid and shouldered by them** relative to the conduct of the Project.

You are, therefore, directed to expedite/ prioritize the processing of the claims for refund of Japanese contractors and nationals so [as] not to delay and jeopardize the release of the funds for OECF funded projects.[48] (Emphases and underscoring supplied)

Therefore, considering that petitioner paid the subject taxes in the aggregate amount of ₱52,612,812.00, which it was not required to pay, the BIR erroneously collected such amount. Accordingly, petitioner is entitled to its refund.

II.

As above-stated, the NIRC vests upon the CIR, being the head of the BIR, the authority to credit or refund taxes which

---

[46] *Id*. at 164.

[47] Dated October 5, 2005. *Id*. at 286.

[48] *Id*.

are erroneously collected by the government. This specific statutory mandate cannot be overridden by averse interpretations made through mere administrative issuances, such as RMC No. 42-99, which – as argued by the CIR – shifts to the executing agencies (particularly, NPC in this case) the power to refund the subject taxes:.[49]

3. In cases where income taxes were previously paid directly by the Japanese contractors or nationals, the corresponding cash refund shall be <u>recovered from the government executing agencies</u> upon the presentation of proof of payment by the Japanese contractors or nationals.[50] (Emphasis and underscoring supplied)

A revenue memorandum circular is an administrative ruling issued by the CIR to interpret tax laws. It is widely accepted that an interpretation by the executive officers, whose duty is to enforce the law, is entitled to great respect from the courts. However, such interpretation is not conclusive and will be disregarded if judicially found to be incorrect.[51] Verily, courts

---

[49] *Id.* at 164. The relevant portions of RMC NO. 42-99 read thus:

B) INCOME TAX

1. Japanese firms or nationals operating as suppliers, contractors or consultants on and/or in connection with any income that accrue from the supply of products and/or services to be provided under the Project Loan, shall file the prescribed income tax returns. Since the executing government agencies are mandated to assume the payment thereof under the Exchange of Notes, the said Japanese firms or nationals need not pay taxes thereunder.
2. The concerned Revenue District Officer shall, in turn, collect the said income taxes from the concerned executing government agencies.
3. **In cases where income taxes were previously paid directly by the Japanese contractors or nationals, the corresponding cash refund shall be <u>recovered from the government executing agencies</u>** upon the presentation of proof of payment by the Japanese contractors or nationals." (Emphasis and underscoring supplied)

[50] *Id.*

[51] See *ING Bank N.V. v. CIR*, G.R. No. 167679, April 20, 2016, 790 SCRA 588, 598-599, citing *Philippine Bank of Communications v. CIR*, 361 Phil. 96, 928-929 (1999).

will not tolerate administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to implement,[52] as in this case. Thus, Item B (3) of RMC No. 42-99, an administrative issuance directing petitioner to claim the refund from NPC, cannot prevail over Sections 204 and 229 of the NIRC, which provide that claims for refund of erroneously collected taxes must be filed with the CIR.

All told, petitioner correctly filed its claim for tax refund under Sections 204 and 229 of the NIRC to recover the erroneously paid taxes amounting to ₱44,288,712.00 as income tax and ₱8,324,100.00 as BPRT from the BIR. To reiterate, petitioner's entitlement to the refund is based on the tax assumption provision in the Exchange of Notes. entered into between the governments of the Philippines and Japan. Given that this is a case of tax assumption and not an exemption, the BIR is, therefore, not without recourse; it can properly collect the subject taxes from the NPC[53] as the proper party that assumed petitioner's tax liability.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 24, 2006 and the Resolution dated December 4, 2006 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 5 are hereby **REVERSED** and **SET ASIDE**. The Decision dated December 17, 2003 of the CTA in C.T.A. Case No. 6139 is **REINSTATED**.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

---

[52] *Philippine Bank of Communication v. CIR*, *id.* at 929.

[53] Although the NPC is exempt from the payment of income tax pursuant to Section 13 of its charter (Republic Act No. 6395), the NPC is liable to pay petitioner's tax liabilities to the BIR, in view of the tax assumption provision in the Exchange of Notes and the Contract.

FIRST DIVISION

[G.R. No. 192723. June 5, 2017]

LEOVIGILDO A. DE CASTRO, *petitioner, vs.* **FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN and the COMMISSIONER OF CUSTOMS,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. (RA) 6713; WHILE RA 6713 VESTS UPON HEADS OF EXECUTIVE DEPARTMENTS THE AUTHORITY TO ENSURE FAITHFUL COMPLIANCE WITH THE STATEMENT OF ASSETS, LIABILITIES AND NETWORTH (SALN) REQUIREMENT, IT DOES NOT STRIP THE OMBUDSMAN OF ITS SOLE POWER TO INVESTIGATE AND PROSECUTE ANY PUBLIC OFFICIAL FOR ILLEGAL, IMPROPER, OR UNJUST ACTS; THE OMBUDSMAN HAS THE AUTHORITY TO UNDERTAKE A DIRECT REVIEW OF PETITIONER'S SALN.—** Section 10 of R.A. 6713 vests upon heads of executive departments the authority to ensure faithful compliance with the SALN requirement. However, it does not strip the Ombudsman of its sole power to investigate and prosecute, *motu proprio* or upon complaint of any person, any public official or employee for acts or omissions which appear to be illegal, unjust, improper, or inefficient. The Court's ruling in *Carabeo v. Sandiganbayan* is instructive: x x x **Whether or not the head of office has taken such step with respect to a particular subordinate cannot bar the Office of the Ombudsman from investigating the latter. Its power to investigate and prosecute erring government officials cannot be made dependent on the prior action of another office. To hold otherwise would be to diminish its constitutionally guarded independence.** The fact that Leovigildo had not been previously placed under a BOC sanctioned investigation does not make the Ombudsman's acts void or premature, as the latter's power to investigate and prosecute him on account of discrepancies in his SALNs stands

independent of the power of the Commissioner of Customs to ensure compliance with the SALN requirement within the BOC.

2. **ID.; ID.; PUBLIC OFFICIALS AND EMPLOYEES; DISHONESTY; ACQUISITION OF ASSETS CLEARLY DISPROPORTIONATE TO ONE'S INCOME WITH MALICIOUS INTENT TO CONCEAL THE TRUTH BY PLACING THEM IN THE NAMES OF THE CHILDREN CONSTITUTES DISHONESTY.—** [T]he Court still finds that substantial evidence exists on record to hold Leovigildo guilty of Dishonesty for having acquired assets manifestly disproportionate to his lawful income, and concealing the same by deliberately placing them in the names of his children. x x x While mere omission from or misdeclaration in one's SALN *per se* do not constitute Dishonesty, an omission or misdeclaration qualifies as such offense when it is attended with malicious intent to conceal the truth, as Dishonesty implies a disposition to lie, cheat, deceive, or defraud. Here, Leovigildo's malicious intent to conceal the Disputed Assets is evident. Leovigildo deliberately placed the Disputed Assets in the names of his children for the purpose of concealing the same. While Leovigildo maintains that his children had the financial capacity to acquire the Disputed Assets, the evidence on record clearly show otherwise.

3. **ID.; ID.; ID.; DISHONESTY IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL ON THE FIRST INSTANCE.—** Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) then in force at the time the Complaint was filed, Dishonesty was classified as a grave offense punishable by dismissal on the first instance, which penalty inherently carries with it cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.

APPEARANCES OF COUNSEL

Danilo C. Cunanan for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J*.:

The Case

This is a petition for review on *certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated April 29, 2009 (Assailed Decision) and Resolution[3] dated June 23, 2010 (Assailed Resolution) in CA-G.R. SP No. 99752 rendered by the Second Division of the Court of Appeals (CA). The Assailed Decision and Resolution stem from an appeal from the Decision[4] dated March 26, 2007 rendered by the Office of the Ombudsman (Ombudsman) in OMB-C-A-05-0617-K, finding petitioner Leovigildo A. De Castro (Leovigildo) guilty of Dishonesty and Grave Misconduct, and imposing upon him the penalty of dismissal from service, cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.

The administrative charges filed against Leovigildo are anchored on his alleged failure to file truthful Statements of Assets and Liabilities (SALNs) for the years 1994, 1995 and 1996, and explain the manifest disproportion between his declared income for the years 1973 to 2004 and the value of the assets he acquired within the same period.[5]

---

[1] *Rollo*, pp. 8-47.

[2] *Id*. at 49-68. Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente concurring.

[3] *Id*. at 70-71. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fernanda Lampas Peralta and Vicente S.E. Veloso concurring.

[4] *Id*. at 72-116. Penned by Overall Deputy Ombudsman Orlando C. Casimiro.

[5] *Id*. 59-60.

The Facts

Leovigildo began working in the Bureau of Customs (BOC) on December 4, 1973[6] as storekeeper at the Manila International Airport.[7] Since then, Leovigildo had been assigned to occupy the following positions:[8]

Year of Assignment	Position
1979	Common Bonded Inspector
1980	Common Bonded Supervisor
1986	Customs Operations Assistant Chief
1989	Supervising Customs Operations Officer
1996	Chief Customs Operations Officer

Marina Rios (Marina), Leovigildo's wife, also served in government. Sometime in July 1969, Marina began working as a clerk in the now defunct Philippine Atomic Energy Commission.[9] Thereafter, Marina rose through the ranks, until she retired as a training officer sometime in 1988.[10]

Based on the Certificates of Employment and Compensation which form part of the records of the case, Leovigildo and Marina's declared income from 1974 to 2004 amounted to **₱10,841,412.28**.[11]

Sometime in 2003, the Ombudsman, through its Field Investigation Office (FIO), conducted *motu proprio* lifestyle checks on government officials and employees.[12] Leovigildo was among those evaluated. The findings of the FIO in respect of Leovigildo's assets and net worth are summarized as follows:

---

[6] *Id*. at 12.

[7] Now Ninoy Aquino International Airport.

[8] *Rollo*, p. 12.

[9] *Id*. at 23, 81.

[10] *Id.* at 23.

[11] *Id*. at 81-83.

[12] *Id.* at 10-11.

Documents revealed that [Leovigildo] earns primarily from his salary as an employee of the [BOC]. [Leovigildo's] annual salary as of 2004 is estimated at [₱]303,052.54, including allowances and bonuses.

[Leovigildo's] [SALN] from 1994 to 2003 showed that neither he nor his spouse had financial connections and business interests. Thus, [Leovigildo] [had] no other source of income except his salary from employment.

[Leovigildo], in his SALN from 1997 to 2003, declared a residential house and lot in Parañaque, a house and lot in Taal[,] Batangas, and an agricultural land in Laguna. [Leovigildo] also disclosed that he acquired a car worth [₱]625,000.00 in 2002.

Records show that there are other properties and business interests belonging to [Leovigildo] which were not declared in his SALNs such as his investments amounting to ₱416,669.00 in Lemar Export and Import Corporation, which was incorporated on 25 May 1994.

There are also properties registered under the name (sic) of [Leovigildo's] children, which should be considered as part of his undisclosed assets, in view of the fact that during the time of the acquisition, the children have (sic) no sources of income or means of livelihood of their own.[13]

The assets in the names of Leovigildo's children (Disputed Assets), which FIO alleged should be attributed to Leovigildo, are further summarized as follows:[14]

Asset	Acquisition Cost	Date of Acquisition	Registered Owner	Age at Acquisition
Investment in Lemar Export and Import Corporation (Lemar Corp.)	₱625,003.50	May 25, 1994	Marina Rose and Leo Gerald, jointly with Leovigildo	Marina Rose - 18 Leo Gerald -24

[13] *Id.* at 73-74.

[14] *Id.* at 79-80, 152-160.

450 square-meter (sq. m) residential house and lot in Muntinlupa City	₱5,708,600.00[15]	December 3, 1997	Leo Gerald	27
Investment in De Castro Oral Implant Center	₱500,000.00	February 28, 1998	Leo Gerald	28
Condominium unit in Makati City	₱3,984,929.75	August 28, 1999	Leo Gerald	28
Investment in Lemar General Trading (Lemar Trading)	₱3,500,000.00[16]	February 2, 1999	Leo Gerald Marie Aleli (Aleli) Marie Antoinette (Antoinette) Leovigildo, Jr. Marina Rose	Leo Gerald -29 Aleli – 28 Antoinette-26 Leovigildo, Jr. – 24 Marina Rose- 23
Condominium unit in Ayala Alabang, Muntinlupa City	₱5,676,861.64	July 8, 1999	Leovigildo, Jr.	24
Toyota Land Cruiser	₱2,800,000.00	June 19, 2000	Leo Gerald	30
Investment in Ceraco Corporation (Ceraco)	₱120,000.00	December 19, 2001	Leovigildo, Jr.	26
Investment in Le Mar Dental Clinic	₱100,000.00	January 21, 2003	Marina Rose	27

[15] Figure represents the sum of the values of the lot and improvements thereon, set at ₱3,825,000.00 and ₱1,883,600.00, respectively.

[16] Appears as ₱3,500.00 in *rollo*, p. 80.

Honda CRV Wagon	₱701,832.00 on installment basis	February 27, 2004	Marina Rose	28
Total Value	**₱23,717,226.89**			

In addition to Leovigildo's alleged undisclosed assets and investments, the FIO also found that based on Bureau of Immigration (BI) records, Leovigildo and his family had taken seventy (70) outbound flights between 1993-2004 to several countries, including Japan, Hong Kong and South Korea. The FIO pegged the cost of such trips at ₱30,000.00 each, bringing the De Castros' total estimated travel cost to **₱2,100,000.00**.[17]

Consequently, the FIO concluded that Leovigildo and Marina's assets and expenses from 1974-2004 amounted to ₱30,829,603.48,[18] and found that this was manifestly disproportionate to their declared income of **₱10,841,412.28**.[19]

Proceedings before the Ombudsman

Subsequently, the FIO filed a Complaint[20] dated October 5, 2005 before the Ombudsman, charging Leovigildo of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, pursuant to Section 22 of the Omnibus Rules Implementing Book V of Executive Order No. 292[21] (Omnibus Rules).[22] In the same Complaint, FIO prayed that (i) a preliminary

---

[17] *Id*. at 78.

[18] *Id*. at 76-80. Figure represents the sum of Leovigildo's declared assets (**₱3,012,376.59**), Leovigildo's alleged undeclared assets registered in the names of his children (**₱23,717,226.89**), the estimated travel cost incurred by the De Castros' (**₱2,100,000.00**), and the De Castros' expenses incurred (**₱2,000,000.00**), over the period beginning 1997 to 2004.

[19] *Id.* at 82-83.

[20] *Id*. at 149-162.

[21] Administrative Code of 1987.

[22] *Rollo*, pp. 149, 160-161.

investigation be conducted against Leovigildo for violation of Section 8 of Republic Act No. (R.A.) 6713[23] and Article 183 of the Revised Penal Code;[24] and (ii) forfeiture proceedings be lodged against Leovigildo, Marina, and their children.[25]

On March 24, 2006, the Ombudsman issued an Order placing Leovigildo under preventive suspension.[26]

In his Counter-Affidavit[27] dated August 28, 2006, Leovigildo maintained that the assets which he and Marina acquired while in government service were all reported in their respective SALNs. Leovigildo summarized these assets accordingly:

Income from 1974 to 2004		₱10,841,412.28
Less: Properties acquired (at acquisition cost):		
- House and [lot], Paranaque	₱381,536.59	
- House and lot at Taal, Batangas	135,000.00	

[23] Section 8 of R.A. 6713 reads, in part:

SEC. 8. *Statements and Disclosure*. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

[24] Article 183 of the Revised Penal Code reads, in part:

ART. 183. *False testimony in other cases and perjury in solemn affirmation.* — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

[25] *Rollo*, p. 160.

[26] *Id*. at 81.

[27] *Id*. at 347-366.

- Agricultural land, Sta. Maria, Laguna	30,000.00	
- Toyota Premio	500,000.00	
- Other personal properties	530,000.00	
	₱1,576,536.59	
Expenses:		
- Cash donation to Leo Gerald, 1995	₱1,000,000.00	
- Wedding gift to Leo Gerald and Angelica Beatriz, 1998	250,000.00	
	₱1,250,000.00	(2,826,536.59)
Available funds for family other expenses		₱8,014,875.69
Less: Cash on hand [as of] December 31, 2004		115,000.00
Actual family and other expenses		₱7,899,875.69[28]

Based on these figures, Leovigildo averred that the net value of the assets he and Marina acquired for the period in question amounts only to ₱1,576,536.59.[29] Further, he also argued that FIO bloated his net worth by using the market values of the properties declared in his SALNs as basis for their computation, instead of using their respective acquisition costs.[30]

Leovigildo also insisted that his children are all professionals who possess the financial capacity to acquire the Disputed Assets that FIO wrongfully attributed to him.[31] He then proceeded to detail his children's professional qualifications to bolster his defense:

---

[28] *Id*. at 353-354.

[29] *Id*. at 354.

[30] *Id*. at 354-355.

[31] *Id*. at 356.

	Degree	**Acquisition of license**	**Sources of Income**
Leo Gerald	Dentistry, Centro Escolar University	1994	(i) service in various dental clinics; (ii) service in own clinic at the Medical Plaza, Makati; (iii) service as professor at Our Lady of Fatima University; (iv) service as company dentist at Global Lighting Phils., Inc.; (v) rental income from clinic space; and (vi) sales income from Lemar Trading[32]
Leovigildo, Jr.	Law, Ateneo Jr. de Manila University	2000	(i) service as associate for Quasha Ancheta Pena and Nolasco Law Office; (ii) service as Chief Legal Counsel of Philippine Power Distributors Investment Corporation; (iii) service as External Legal Counsel of Seed Capital Ventures Inc.; and (iv) service as Special Consultant for P.A. Garcia Law Office[33]
Aleli	Medicine, University of Sto. Tomas	1997	(i) service as resident trainee and medical officer at East Avenue Medical Center; (ii) service as general obstetrics and gynecology practitioner at San Jose District Hospital and Fortmed Medical Clinic in Sta. Rosa, Laguna; and (iii) service as gynecologic oncologist at Philippine General Hospital[34]

---

[32] *Id*. at 357-361.

[33] *Id*. at 361.

[34] *Id.* at 363.

Antoinette	Medicine, University of Sto. Tomas	1998	Service as gastroenterologist at the Institute of Digestive Diseases, St. Luke's Medical Center in Quezon City[35]
Marina Rose	Dentistry, Rose University of the East	1999	(i) service in various dental clinics; (ii) service in own clinic in Carmona, Cavite; and (iii) service as company dentist for Provident Apparel International Manufacturing Corporation[36]

Finally, Leovigildo denied FIO's claims regarding his family's foreign trips, emphasizing that the documents which serve as basis for these claims were not attached to the Complaint.[37]

On March 26, 2007, the Ombudsman issued a Decision finding Leovigildo guilty of the administrative charges against him. The relevant portion of said Decision reads:

> [R]espondent LEOVIGILDO DE CASTRO is hereby found **GUILTY** of DISHONESTY and GRAVE MISCONDUCT and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.[38]

The Ombudsman observed that while Leovigildo admits that he and his wife acquired a house and lot in Taal, Batangas through inheritance in 1969, and subsequently purchased a 197.6 sq. m. contiguous lot and built a house thereon in 1973 and 1988, respectively, these assets were not reported in his 1994, 1995 and 1996 SALNs.[39] Leovigildo also failed to report that his wife won ₱2,000,000.00 from the sweepstakes in 1994.[40]

---

[35] *Id*. at 364.

[36] *Id*. at 365.

[37] *Id*.

[38] *Id*. at 115.

[39] *Id*. at 95-96, 109.

[40] *Id*. at 109.

In addition, the Ombudsman found that while Leovigildo's children were all practicing professionals at the time of the investigation, the documentary evidence on record show that the cost of the Disputed Assets were grossly disproportionate to their respective incomes at the time of acquisition.[41] Thus, the Ombudsman concluded that Leovigildo deliberately placed the Disputed Assets in the names of his children to exclude them from his SALNs.[42] According to the Ombudsman, such deliberate exclusion, coupled with the fact that the acquisition cost of the Disputed Assets were manifestly out of proportion to Leovigildo and Marina's declared income, gave rise to the *prima facie* presumption that these assets were unlawfully acquired.[43]

Leovigildo filed a Motion for Reconsideration (MR) dated May 2, 2007, which the Ombudsman denied on June 25, 2007 for lack of merit.[44]

Proceedings before the CA

On August 1, 2007, Leovigildo filed an appeal (Appeal) before the CA *via* Rule 43, ascribing both errors of fact and law to the Ombudsman.

Leovigildo questioned the Ombudsman's authority to directly review his SALNs, arguing that under Section 10 of R.A. 6713, it is the Commissioner of Customs who is vested with authority to review the SALNs filed by the employees of the BOC.[45]

Further, Leovigildo insisted that the Ombudsman's findings were not supported by substantial evidence.[46] While Leovigildo admitted that he failed to report his Taal assets in his 1994,

---

[41] *Id*. at 111.

[42] *Id*. at 96.

[43] *Id*. at 111.

[44] *Id*. at 117-121.

[45] *Id*. at 683-685.

[46] *Id*. at 687.

1995 and 1996 SALNs, he claimed that such failure was an honest mistake which he voluntarily rectified in his succeeding SALNs.[47] Moreover, Leovigildo argued he did not report Marina's sweepstakes winnings in his 1994 SALN as these are not among the assets required to be reported thereunder.[48]

In any case, Leovigildo maintained that under BOC guidelines,[49] the penalty prescribed for failure to file or correct an erroneous SALN is only suspension for a period of one (1) month and one (1) day to six (6) months on the first instance and dismissal from service on the second instance. Moreover, such offense does not constitute Dishonesty or Gross Misconduct.[50]

On April 29, 2009, the CA rendered the Assailed Decision dismissing the Appeal. The dispositive portion of said Decision reads:

> **WHEREFORE**, premises considered, the instant petition is **DISMISSED**. Accordingly, the assailed Decision and Order of the Ombudsman **STAND**.
>
> SO ORDERED.[51]

The CA held that the Ombudsman possesses ample authority to review Leovigildo's SALN pursuant to its Constitutional mandate.[52]

Anent Leovigildo's claim that the omissions in his 1994, 1995 and 1996 SALNs were not impelled by any malicious intent, the CA stressed that Leovigildo's liability rests not only

---

[47] *Id*. at 682.

[48] *Id*. at 686.

[49] Guidelines in the Filing and Submission of Statement of Assets, Liabilities and Networth and Disclosure of Business Interests and Financial Connections, BOC Memorandum dated March 19, 2007; *rollo*, pp. 702-703.

[50] See *rollo*, p. 686.

[51] *Id*. at 67.

[52] *Id*. at 59; see also 1987 CONSTITUTION, Art. XI, Sec. 13.

on the basis of such omissions, but *primarily* on his failure to explain the manifest disproportion between his declared income and the assets in his name, and in the names of his children.[53] In this connection, the CA found the Ombudsman's findings were supported by "more than [a] substantial amount" of evidence, and thus found no reason to overturn the same.[54]

Aggrieved, Leovigildo filed an MR on May 22, 2009. The CA denied said MR through the Assailed Resolution,[55] which was subsequently received by Leovigildo on July 5, 2010.[56]

On July 19, 2010, Leovigildo filed a Motion for Extension of Time, praying for an additional period of fifteen (15) days within which to file his petition for review on *certiorari* before the Court.

Finally, Leovigildo filed the present Petition on August 2, 2010.

The Issue

The sole issue for this Court's resolution is whether the CA erred in affirming the Assailed Decision and Resolution finding Leovigildo administratively liable for Dishonesty and Grave Misconduct.

The Court's Ruling

As a general rule, only questions of law may be raised in petitions filed under Rule 45.[57] However, there are recognized exceptions to this general rule, namely:

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) **when there is grave abuse of discretion**;

---

[53] *Id*. at 59-60.

[54] *Id*. at 60-61.

[55] *Id*. at 70-71.

[56] *Id*. at 4.

[57] RULES OF COURT, Rule 45, Sec. 1.

(4) **when the judgment is based on a misapprehension of facts**; (5) **when the findings of facts are conflicting**; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) **when the findings are conclusions without citation of specific evidence on which they are based**; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. x x x[58] (Emphasis supplied)

The allegations in the Petition invoke the third, fourth, fifth and eighth exceptions above, and call on this Court to review the findings of the Ombudsman in the Assailed Decision, which were in turn affirmed by the CA.

The Petition is granted, in part. The Court finds that while the CA correctly ruled that Leovigildo's acts constitute Dishonesty, it erred when it further held that such acts also constitute Grave Misconduct. Accordingly, the Court finds sufficient basis to warrant the modification of the Assailed Decision in this respect.

The Ombudsman possesses sufficient authority to undertake a direct review of Leovigildo's SALN

Leovigildo claims that he does not question the general authority of the Ombudsman to investigate and prosecute erring public officials and employees. However, he submits that Section 10 of R.A. 6713 vests upon heads of executive departments the *specific and direct* authority to review their subordinates' SALNs. Proceeding therefrom, Leovigildo alleges that the review, investigation and corrective action taken by the

---

[58] *Ambray and Ambray, Jr. v. Tsourous, et al.*, G.R. No. 209264, July 5, 2016, pp. 6-7.

Ombudsman collectively constitute a violation of R.A. 6713, an encroachment of the authority of the Commissioner of Customs,[59] and a blatant disregard of the latter's guidelines prescribing the review and compliance procedure for the submission of SALNs governing the employees and officials of the BOC.[60] Leovigildo is mistaken.

Section 10 of R.A. 6713 provides:

Section 10. *Review and Compliance Procedure*. — (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of the Congress shall have the power, within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department. (Emphasis supplied)

Section 10 of R.A. 6713 vests upon heads of executive departments the authority to ensure faithful compliance with the SALN requirement. However, it does not strip the Ombudsman of its sole power to investigate and prosecute, *motu*

[59] *Rollo*, p. 42.

[60] *Id*. at 41-42.

proprio or upon complaint of any person, any public official or employee for acts or omissions which appear to be illegal, unjust, improper, or inefficient.[61] The Court's ruling in *Carabeo v. Sandiganbayan*[62] is instructive:

True, Section 10 of R.A. 6713 provides that when the head of office finds the SALN of a subordinate incomplete or not in the proper form such head of office must call the subordinate's attention to such omission and give him the chance to rectify the same. But this procedure is an internal office matter. **Whether or not the head of office has taken such step with respect to a particular subordinate cannot bar the Office of the Ombudsman from investigating the latter. Its power to investigate and prosecute erring government officials cannot be made dependent on the prior action of another office. To hold otherwise would be to diminish its constitutionally guarded independence.**[63] (Emphasis supplied)

The fact that Leovigildo had not been previously placed under a BOC sanctioned investigation does not make the Ombudsman's acts void or premature, as the latter's power to investigate and prosecute him on account of discrepancies in his SALNs stands independent of the power of the Commissioner of Customs to ensure compliance with the SALN requirement within the BOC.

Leovigildo's acts do not constitute
Grave Misconduct

Leovigildo's administrative liability primarily rests on his failure to faithfully comply with the SALN requirement, and the acquisition of assets manifestly disproportionate to his lawful income. These acts, while undoubtedly inimical to public service, do not constitute Grave Misconduct.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior.[64] Misconduct is grave where the elements of corruption, a clear

---

[61] *Carabeo v. Sandiganbayan*, 659 Phil. 40, 46 (2011).

[62] *Id*.

[63] *Id*. at 46-47.

[64] *Abulencia v. Hermosisima*, 712 Phil. 248, 252 (2013).

intent to violate the law, or a flagrant disregard of established rules are present.[65] To constitute Misconduct, the act or omission complained of must have a direct relation to the public officer's duties and affect not only his character as a private individual, but also, and more importantly, the performance of his official duties as a public servant.[66]

Hence, to hold Leovigildo liable for Grave Misconduct, the acts and omissions for which he was charged must be of such character as to have had an effect on his duties as Chief Customs Operations Officer. The Court finds that such is not the case. The Court's ruling in *Gupilan-Aguilar v. Office of the Ombudsman*[67] is in point:

> Owning properties disproportionate to one's salary and not declaring them in the corresponding SALNs cannot, without more, be classified as grave misconduct. **Even if these allegations were true, we cannot see our way clear how the fact of non-declarations would have a bearing on the performance of functions by petitioner Aguilar, as Customs Chief of the Miscellaneous Division, and by petitioner Hernandez, as Customs Operations Officer.** It is *non-sequitur* to assume that the omission to declare has served, in some way, to hinder the rendition of sound public service for there is no direct relation or connection between the two. Without a nexus between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail.[68] (Emphasis supplied)

Nevertheless, Leovigildo cannot be completely absolved of liability.

There exists substantial evidence on record to hold Leovigildo liable for Dishonesty.

To counter the charge of Dishonesty, Leovigildo argues that the Ombudsman's findings are grounded entirely on speculation,

---

[65] *Id*.

[66] See *Gupilan-Aguilar v. Office of the Ombudsman*, 728 Phil. 210, 231 (2014).

[67] *Id.*

[68] *Id*. at 231-232.

surmises and conjectures, and that the CA, in turn, failed to appreciate important facts which, if properly considered, will justify a reversal of the Ombudsman's findings.[69] In particular, Leovigildo adopts the allegations in his Appeal and asserts that the Ombudsman (i) failed to attach the BI records which supposedly prove that he and his family had taken seventy (70) foreign trips while he was in government service,[70] and (ii) glossed over his children's professional qualifications, as well as other circumstances which prove that they each had the financial capacity to legitimately acquire the Disputed Assets which were attributed to him.[71]

After a perusal of the Ombudsman's submissions, the Court finds that the disputed BI records which serve as the latter's proof of the De Castros' alleged foreign trips do not form part of the records of the case. The value the Ombudsman used to quantify the cost of these alleged trips (₱30,000.00 for each trip) was a "conservative estimate"[72] which the latter appears to have arbitrarily assigned for expediency.

Before a foreign trip taken by a public officer can be considered as proof of unexplained wealth, it shall be first necessary to establish that the cost thereof is, in fact, manifestly disproportionate to the latter's lawful income. Thus, in *Pleyto v. PNP-Criminal Investigation and Detection Group*,[73] the Court refused to consider the foreign trips alleged to have been taken by respondent therein as proof of unexplained wealth for failure of the complainant therein to establish that the cost of these trips were beyond the former's capacity to pay, hence:

The travel records from the BID could only establish the details on the trips taken by petitioner and his wife, specifically, the dates

---

[69] *Rollo*, p. 21.

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

[71] *Id.* at 27-35.

[72] *Id.* at 78.

[73] 563 Phil. 842 (2007).

of departure and arrival, the destination, and the frequency thereof. Even these details were at times incomplete or contradictory. x x x It appears to this Court that complete reliance was made on the travel records provided by the BID. No further effort was exerted to complete the travel information of petitioner and his wife and clarify or reconcile confusing entries.

It is a long jump to conclude just from the BID travel records that the foreign travels taken by petitioner and his wife were beyond their financial capacity. As this Court has already found, petitioner had other sources of lawful income apart from his salary as a public official. His wife was also earning substantial income from her businesses. Now the question is, whether the petitioner and his wife could afford all their trips abroad considering their combined income.

Obviously, before this question can be answered, the cost of the trips must be initially determined. The investigating officers of the PNP-CIDG estimated the cost of each trip to be ₱100,000.00, an estimation subsequently adopted by the Office of the Ombudsman and the Court of Appeals. This Court, though, cannot simply affirm such estimation.

x x x **The investigating officers, in fixing the amount of all the foreign trips at ₱100,000.00 each, offered no explanation or substantiation for the same. With utter lack of basis, the figure of ₱100,000.00 as cost for each foreign travel is random and arbitrary and, thus, unacceptable to this Court. Without a reasonable estimation of the costs of the foreign travels of petitioner and his wife, there is no way to determine whether these were within their lawful income.**[74] (Emphasis supplied)

Proceeding therefrom, the Court finds that the CA erred when it considered the Ombudsman's findings regarding the De Castros' alleged foreign trips as established facts, in the absence of substantial evidence showing that such trips were in fact taken, and that it was reasonable to peg the total cost of these trips at ₱2,100,000.00.

Nevertheless, the Court still finds that substantial evidence exists on record to hold Leovigildo guilty of Dishonesty for

---

[74] *Id*. at 896-897.

having acquired assets manifestly disproportionate to his lawful income, and concealing the same by deliberately placing them in the names of his children.

Sections 7 and 8 of R.A. 3019[75] spells out the SALN requirement and lays down its scope. These provisions state:

Section 7. *Statement of Assets and Liabilities.* — Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.

Section 8. *Prima facie evidence of and dismissal due to unexplained wealth*. — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, **a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal.** Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this

---

[75] The Anti-Graft and Corrupt Practices Act.

section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed. (Emphasis supplied)

While mere omission from or misdeclaration in one's SALN *per se* do not constitute Dishonesty, an omission or misdeclaration qualifies as such offense when it is attended with malicious intent to conceal the truth,[76] as Dishonesty implies a disposition to lie, cheat, deceive, or defraud. [77]

Here, Leovigildo's malicious intent to conceal the Disputed Assets is evident. Leovigildo deliberately placed the Disputed Assets in the names of his children for the purpose of concealing the same. While Leovigildo maintains that his children had the financial capacity to acquire the Disputed Assets, the evidence on record clearly show otherwise. As painstakingly explained by the CA:

Remarkably, as can be gleaned from the records, albeit at present they are all lucratively employed, [Leovigildo's] children were able to acquire real and personal properties despite the fact that at the time of the said properties' acquisition they had no financial capacity to do so. [Leovigildo] failed to convince [the CA] to overturn the factual findings of the Ombudsman on this matter which is notably supported by a more than substantial amount of evidence.

For one, LEO GERALD, his eldest son, is the registered owner of a condominium unit located in Makati City which was acquired in 1995 through installment basis and fully paid in 1998 in the total amount of ₱3,984,929.75. The terms of payment which were purportedly undertaken by LEO GERALD in the purchase of the aforesaid unit are the following:

1. [O]n 1 September 1994, LEO GERALD paid ₱100,000.[00];
2. [H]e paid ₱447,323.96 per month for three [3] months starting October 1994 to December 1994 or a total of ₱1,341,971.90;

---

[76] *Gupilan-Aguilar v. Office of the Ombudsman, supra* note 66, at 234.

[77] *Dumaguete CLC Lending Corp. v. Tubilla*, A.M. No. P-15-3343, August 3, 2015, p. 3 (Unsigned Resolution).

₱90,123.24 per month for 24 months starting January 1995 to November 1996 or a total of ₱2,542,957.85; and

3. [H]is last payment was on 2 December 1996 in the amount of ₱470,123.33.

However, [Leovigildo's] explanation relative thereto is totally unsatisfactory. As correctly observed by the Ombudsman, it was only on 3 January 1994 when LEO GERALD was issued his license to practice his dental profession, thus, it is highly incredible that he could have afforded to comply with the abovementioned terms of payment. Truly, [the CA] can not come to terms with [Leovigildo's] stance that on LEO GERALD's first year as a dentist, i.e., in 1994, the latter had earned close to ₱1.5 million. x x x

x x x x x x x x x

Moreover, records show that in 1994 LEO GERALD likewise made an investment with Lemar Export and Import Corporation worth ₱208,334.50. Then, a year after LEO GERALD allegedly paid the last installment for the aforementioned condominium unit, he purchased a 450 square meter property in Muntinlupa in the amount of ₱3,825,000.00. Thereafter, a house was built thereon which was valued at ₱1,883,600.00. [Leovigildo] argues that the lot acquisition was financed by LEO GERALD's soon-to-be parents-in-law, while the money used in the investment was advanced by Atty. RODRIGO STA. ANA. The construction of the house was financed by the proceeds of the sale of LEO GERALD and his wife's Toyota Land Cruiser on 2 April 2003.

This reasoning is likewise flawed.

It bears stressing that the relationship of LEO GERALD and Atty. STA. ANA has never been established in the instant case, thus, considering that at that time LEO GERALD was not yet financially capable to undertake such investment, the source thereof is indeed highly suspicious. It could only be then surmised that the source of such investment was from [Leovigildo's] pocket, which again, is observed to be incongruent with [Leovigildo's] disposable income as appearing in his SALNs.

Regarding the 450 square meter property in Muntinlupa City, per the Deed of Absolute Sale dated 3 December 1997, LEO GERALD paid the vendor, TAN TIONG, the full amount on even date. However, the supposed loan, which was said to have financed the aforementioned

acquisition, was undertaken by LEO GERALD with the Spouses AVENA, his soon-to-be parents-in-law, on 18 December 1997, which was notably 15 days after the full payment of the property. Evidently, the documents on hand support the Ombudsman's findings that the proceeds of the alleged loan was not used by LEO GERALD in the purchase of the 450 square meter property.

In the same vein, with respect to [Leovigildo's] claim that the money used in the construction of the house x x x was the proceeds from the sale of LEO GERALD's Toyota Land Cruiser, it should be stressed that the subject vehicle was acquired in cash by LEO GERALD and his wife in the year 2000 when their registered total annual net income per their Annual Income Tax Return was only ₱216,825.50. x x x

x x x x x x x x x

Similarly, the subject properties acquired by [Leovigildo's] other children, namely: LEOVIGILDO, Jr., MARIE ANTOINETTE and MARINA ROSE, were proved by substantial quantum of evidence [to have been] purchased during the time when the said children were likewise not financially capable of acquiring the same.

Recorded evidence disclosed that on 14 January 1999, LEOVIGILDO, Jr. purchased a condominium unit at Richville Corporate Tower in Ayala, Alabang, for ₱5,676,861.64. Notably, however, on said date, LEOVIGILDO, Jr. was only 24 years old and still a law student at that. [Leovigildo's] position that such ownership was just held in trust by LEOVIGILDO, Jr. for his first cousin, LEONILO DE CASTRO ATIENZA is hard to believe considering that, as admitted by [Leovigildo], no copy of declaration of trust has been filed with the Office of the Clerk of Court of Makati City as required by the Notarial Law. This verity casts doubt on the veracity of the supposed trust agreement. Concomitantly, the allegation is self-serving and viewed as a tool to hide the truth that the said condominium unit is indeed owned by [Leovigildo]. Perforce, what is clear and convincing from the records is the fact that LEOVIGILDO, Jr. is the registered owner of the subject condominium unit. Naturally, as between the documents and the said declaration of trust x x x the former is deserving of more credence.

Evidence further shows that in the year 1999, MARIE ANTOINETTE, together with her husband, had a total income of ₱374,083.50, but made an investment of ₱700,000.00 in Lemar General

Trading Corporation which was established in the same year. Evidently, this circumstance is suspicious considering that they were not financially capable then to invest such amount.

Also, on the same year (1999), MARINA ROSE, [Leovigildo's] daughter who just passed the Dental Board Examinations, made a ₱100,000.00 investment in Le Mar Dental Clinic. Again, the source of said investment is dubious considering that MARINA ROSE could not have earned that much as she was just in the practice of her profession in barely less than a year.

Viewed in the light of the aforementioned disquisition, and as found by the Ombudsman, [to] which [the CA] totally subscribe[s], all the foregoing acquisitions and investments could only mean one thing, viz: the sources thereof came from [Leovigildo] and are in fact owned by [him] but were registered under his children's name so as to hide [their ownership]. Sadly, [Leovigildo] miserably failed to satisfactorily establish the legitimate source of income which was used in acquiring the subject properties.[78]

This Court, not being a trier of facts, accords respect to the findings of the Ombudsman where, as here, they are supported by substantial evidence and have been affirmed by the CA. Accordingly, these findings will no longer be disturbed.[79] Consequently, since Leovigildo failed to satisfactorily show that his children had the capacity to acquire the Disputed Assets, the Ombudsman, and thereafter, the CA, correctly arrived at the inescapable conclusion that the same were acquired by Leovigildo himself.

When a public officer's accumulated wealth is manifestly disproportionate to his lawful income and such public officer fails to properly account for or explain where such wealth had been sourced, he becomes administratively liable for Dishonesty.[80] In this case, the disproportion between Leovigildo and Marina's declared income (₱10,841,412.28) and the

---

[78] *Rollo*, pp. 60-66.

[79] See *Bulos, Jr. v. Yasuma*, 554 Phil. 591, 601 (2007).

[80] See *Gupilan-Aguilar v. Office of the Ombudsman, supra* note 66, at 234.

acquisition cost of the Disputed Assets (₱23,717,226.89) is too stark to be ignored.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) then in force at the time the Complaint was filed, Dishonesty was classified as a grave offense punishable by dismissal on the first instance, which penalty inherently carries with it cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.[81] This penalty had been adopted under the Revised Rules on Administrative Cases in the Civil Service now in force. Hence, the Court finds that the penalty imposed upon Leovigildo is proper.

Public service demands the highest level of honesty and transparency from its officers and employees. The Constitution requires that all public officers and employees be, at all times, accountable to the people; serve with utmost responsibility, integrity, loyalty and efficiency; act with patriotism and justice; and lead modest lives. Public office *is* a public trust; it must be treated as a privilege rather than a right, and rest firmly upon one's sense of service rather than entitlement. In this light, the Court deems it necessary to reiterate, as a final note, its pronouncement in *Casimiro v. Rigor*:[82]

> The constitutionalization of public accountability shows the kind of standards of public officers that are woven into the fabric of our legal system. To reiterate, public office is a public trust, which embodies a set of standards such as responsibility, integrity and efficiency. Unfortunately, reality may sometimes depart from these standards, but our society has consciously embedded them in our laws so that they may be demanded and enforced as legal principles, and the Court is mandated to apply these principles to bridge actual reality to the norms envisioned for our public service.[83]

---

[81] Section 58(a), URACCS, CSC Resolution No. 991936 dated August 31, 1999.

[82] G.R. No. 206661, December 10, 2014, 744 SCRA 611.

[83] *Id*. at 627-628.

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED IN PART**. The Court of Appeals' Decision dated April 29, 2009 and Resolution dated June 23, 2010 in CA-G.R. SP No. 99752 are **MODIFIED**. The charge of Grave Misconduct against petitioner Leovigildo A. De Castro is **DISMISSED**. However, his conviction for Dishonesty is **AFFIRMED**, and accordingly, he is meted the corresponding penalty of **DISMISSAL FROM THE SERVICE** and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 194152. June 5, 2017]

MAKILITO B. MAHINAY, *petitioner, vs.* **DURA TIRE & RUBBER INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; ACT NO. 3135; THE RIGHT TO REDEEM THE MORTGAGED PROPERTY MUST BE EXERCISED WITHIN ONE (1) YEAR FROM THE DATE THE CERTIFICATE OF SALE IS REGISTERED; SHOULD THE PURCHASER REFUSE TO SELL BACK THE PROPERTY WITHIN THE ONE YEAR PERIOD, MORTGAGOR MAY TENDER PAYMENT TO THE SHERIFF WHO CONDUCTED THE FORECLOSURE

SALE.— By force of law, specifically, Section 6 of Act No. 3135, Mahinay's right to redeem arose when the mortgaged property was extrajudicially foreclosed and sold at public auction. There is no dispute that Mahinay had a lien on the property subsequent to the mortgage. Consequently, he had the right to buy it back from the purchaser at the sale, Dura Tire in this case, "from and at any time within the term of one year from and after the date of the sale." x x x The "date of the sale" referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not "'take effect as a conveyance, or bind the land' until it is registered." The right of redemption being statutory, the mortgagor may compel the purchaser to sell back the property within the one (1)-year period under Act No. 3135. If the purchaser refuses to sell back the property, the mortgagor may tender payment to the Sheriff who conducted the foreclosure sale. Here, Mahinay should have tendered payment to Sheriff Laurel instead of insisting on directly paying Move Overland's unpaid credit purchases to Dura Tire.

2. **ID.; ID.; ID.; PENDENCY OF AN ACTION FOR ANNULMENT OF THE FORECLOSURE SALE DOES NOT TOLL THE RUNNING OF THE PERIOD TO REDEEM.—** As early as 1956, this Court held in *Mateo v. Court of Appeals* that "the right of redemption . . . must . . . be exercised in the mode prescribed by the statute." The one (1)-year period of redemption is fixed, hence, non-extendible, to "avoid prolonged economic uncertainty over the ownership of the thing sold." Since the period of redemption is fixed, it cannot be tolled or interrupted by the filing of cases to annul the foreclosure sale or to enforce the right of redemption. "To rule otherwise . . . would constitute a dangerous precedent. A likely offshoot of such a ruling is the institution of frivolous suits for annulment of mortgage intended merely to give the mortgagor more time to redeem the mortgaged property."

3. **ID.; ID.; ID.; ID.; RULING IN *CONSOLIDATED BANK & TRUST COMPANY V. INTERMEDIATE APPELLATE COURT* DOES NOT APPLY IN CASE AT BAR.—** *Consolidated Bank* is not precedent for the present case. *Consolidated Bank* cited *Ong Chua v. Carr*, an inapplicable case, as basis for ruling that "the pendency of an action tolls

the term of the right of redemption." *Ong Chua* involved a sale with right to repurchase, and the period of the "right of redemption" referred to in that case was governed by the provisions of the Civil Code on conventional redemption, specifically, Articles 1601 and 1606. On the other hand, the present case involves the redemption of an extrajudicially foreclosed property. The right of redemption involved in this case is governed by Section 6 of Act No. 3135. The respondents in *Consolidated Bank* actively denied the petitioner its right of redemption. This Court, therefore, held that the petitioner in *Consolidated Bank* was a victim of fraud. No such fraud exists in the present case. Moreover, the previously discussed cases of *CMS Stock Brokerage* and *Spouses Pahang* were promulgated later than *Consolidated Bank*. That the pendency of an action questioning the legality of the foreclosure sale or enforcing the right of redemption does not toll the running of the period of redemption must be the controlling doctrine. All told, the trial court correctly dismissed Mahinay's Complaint for judicial declaration of right to redeem. To grant the Complaint would have extended the period of redemption for Mahinay, in contravention of the fixed one (1)-year period provided in Act No. 3135.

APPEARANCES OF COUNSEL

M.B Mahinay & Associates for petitioner.
Reyes & Santos Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

The period to redeem a property sold in an extrajudicial foreclosure sale is not extendible. A pending action to annul the foreclosure sale does not toll the running of the one (1)-year period of redemption under Act No. 3135.[1]

---

[1] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

This resolves a Petition for Review on Certiorari[2] directly filed before this Court, assailing the Judgment on the Pleadings[3] dated April 13, 2010 and Order[4] dated September 2, 2010 rendered by Branch 20 of the Regional Trial Court of Cebu City in Civil Case No. CEB-33639. The trial court dismissed the Complaint filed by Makilito B. Mahinay (Mahinay), declaring that he already lost his right to redeem a parcel of land sold in an extrajudicial foreclosure sale.[5]

The parcel of land, with an area of 3,616 square meters and located in Barrio Kiot, Cebu City, was covered by Transfer Certificate of Title (TCT) No. 111078 under the name of A&A Swiss International Commercial, Inc. (A&A Swiss).[6] The property was mortgaged to Dura Tire and Rubber Industries, Inc. (Dura Tire), a corporation engaged in the supply of raw materials for tire processing and recapping, as security for credit purchases to be made by Move Overland Venture and Exploring, Inc. (Move Overland).[7] Under the mortgage agreement, Dura Tire was given the express authority to extrajudicially foreclose the property should Move Overland fail to pay its credit purchases.[8]

On June 5, 1992, A&A Swiss sold the property to Mahinay for the sum of ₱540,000.00.[9] In the Deed of Absolute Sale,[10] Mahinay acknowledged that the property had been previously mortgaged by A&A Swiss to Dura Tire, holding himself liable for any claims that Dura Tire may have against Move Overland.[11]

---

[2] *Rollo*, pp. 9-32.

[3] *Id*. at 34-37. The Judgment on the Pleadings was penned by Presiding Judge Bienvenido R. Saniel, Jr.

[4] *Id*. at 38.

[5] *Id*. at 37.

[6] *Id*. at 46.

[7] *Id*.

[8] *Id*. at 46-47.

[9] *Id*. at 43.

[10] *Id*. at 43-44.

[11] *Id*. at 43.

On August 21, 1994, Mahinay wrote Dura Tire, requesting a statement of account of Move Overland's credit purchases. Mahinay sought to pay Move Overland's obligation to release the property from the mortgage.[12] Dura Tire, however, ignored Mahinay's request.[13]

For Move Overland's failure to pay its credit purchases, Dura Tire applied for extrajudicial foreclosure of the property on January 6, 1995.[14] Mahinay protested the impending sale and filed a third-party claim before the Office of the Provincial Sheriff of Cebu.[15]

Despite the protest, Sheriff Romeo Laurel (Sheriff Laurel) proceeded with the sale and issued a Certificate of Sale in favor of Dura Tire, the highest bidder at the sale.[16] The property was purchased at ₱950,000.00, and the Certificate of Sale was registered on February 20, 1995.[17]

On March 23, 1995, Mahinay filed a Complaint[18] for specific performance and annulment of auction sale before the Regional Trial Court of Cebu City. According to Mahinay, there was no proof that Dura Tire supplied raw materials to Move Overland after the property was mortgaged.[19] Mahinay added that Dura Tire allegedly deprived him of the opportunity to release the property from the mortgage by failing to furnish him with Move Overland's statement of account.[20] Dura Tire, therefore, had no right to foreclose the mortgage and the foreclosure sale was void.

---

[12] *Id*. at 45, Letter dated August 21, 1994.

[13] *Id*. at 91, Court of Appeals Decision dated June 16, 2006.

[14] *Id*. at 154, Comment.

[15] *Id*. at 90 and 91.

[16] *Id*.

[17] *Id.* at 48.

[18] *Id*. at 49-54.

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

[20] *Id.* at 50.

In its Answer,[21] Dura Tire mainly argued that Mahinay had no cause of action to file the Complaint to annul the foreclosure sale since he was not privy to the mortgage agreement.[22]

Acting on Dura Tire's affirmative defense, Branch 15 of the Regional Trial Court of Cebu City initially dismissed the Complaint.[23] However, on mandamus and certiorari, the Court of Appeals set aside the order of the trial court and remanded the case for further proceedings.[24] The case was then re-raffled to Branch 12 of the Regional Trial Court of Cebu City.[25]

After pre-trial proceedings, the trial court again ordered the dismissal of the Complaint due to Mahinay's failure to prosecute the case. However, upon Mahinay's Motion for Reconsideration, the case was reinstated.[26]

The case was again re-raffled, this time to Branch 58.[27] After due proceedings, the trial court ultimately dismissed Mahinay's Complaint in the Decision[28] dated July 29, 2004. The trial court held that Dura Tire was entitled to foreclose the property because of Move Overland's unpaid credit purchases.[29]

---

[21] *Id.* at 55-64, Answer with Special and Affirmative Defenses and Counterclaims.

[22] *Id*. at 57.

[23] *Id*. at 66-67. The Order was penned by Presiding Judge German G. Lee, Jr. of Branch 15, Regional Trial Court of Cebu, Cebu City.

[24] *Id*. at 68-74. The Decision was promulgated on November 27, 1998, docketed as CA-G.R. SP No. 42944, and was penned by Associate Justice Corona Ibay Somera and concurred in by Associate Justice (subsequently Associate Justice of this Court) Romeo J. Callejo, Sr. and Associate Justice Salvador J. Valdez, Jr. of the Former Special 8th Division, Court of Appeals, Manila.

[25] *Id*. at 92, Court of Appeals Decision dated June 16, 2006.

[26] *Id.*

[27] *Id.* at 93, Court of Appeals Decision dated June 16, 2006.

[28] *Id*. at 75-89. The Decision, docketed as Civil Case No. CEB-17248, was penned by Presiding Judge Gabriel T. Ingles of Branch 58, Regional Trial Court, Cebu City.

[29] *Id*. at 89.

Mahinay's appeal was dismissed by the Court of Appeals in the Decision[30] dated June 16, 2006. The Court of Appeals held that Mahinay had no right to question the foreclosure of the property.[31] Mahinay, as "substitute mortgagor,"[32] was fully aware that the property he purchased from A&A Swiss was previously mortgaged to Dura Tire to answer for Move Overland's obligation. Considering that Move Overland failed to pay for its credit purchases, Dura Tire had every right to foreclose the property.[33]

Mahinay filed a Petition for Review on Certiorari[34] before this Court. In G.R. No. 173117, this Court denied Mahinay's Petition as well as his Motion for Reconsideration.[35] The June 16, 2006 Decision of the Court of Appeals thus became final and executory on August 8, 2007, 15 days after Mahinay received a copy of the Resolution denying his Motion for Reconsideration filed before this Court.[36]

Relying on the Court of Appeals' finding that he was a "substitute mortgagor," Mahinay filed a Complaint[37] for judicial declaration of right to redeem on August 24, 2007. "As the admitted owner of the [property] at the time of the foreclosure,"[38] Mahinay argued that he "must have possessed and still continues to possess the absolute right to redeem the [property]."[39]

---

[30] *Id.* at 90-98. The Decision, docketed as CA-G.R. CV No. 00662, was penned by Associate Justice Isaias P. Dicdican and was concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon of the 19th Division, Court of Appeals, Cebu City.

[31] *Id.* at 96.

[32] *Id*.

[33] *Id*.

[34] *Id*. at 9-32.

[35] *Id*. at 17-19.

[36] *Id*. at 18. Mahinay received the copy of the Resolution denying his Motion for Reconsideration on July 24, 2007.

[37] *Id*. at 100-110.

[38] *Id*. at 105.

[39] *Id*.

Dura Tire answered[40] the Complaint, raising the affirmative defense of *res judicata*. Dura Tire argued that the Complaint for judicial declaration of right to redeem had identical parties, subject matter, and causes of action with that of the Complaint for annulment of foreclosure sale.[41] Furthermore, the period of Mahinay's right of redemption had already lapsed. Therefore, Mahinay could not be allowed to belatedly redeem the property.[42]

During the hearing on October 27, 2008, Mahinay and Dura Tire jointly moved for a judgment on the pleadings. The trial court granted the motion and deemed the case submitted for decision after the filing of memoranda.[43]

Mahinay having acquired the property from A&A Swiss before Dura Tire foreclosed the property, the trial court ruled that Mahinay became a "successor-in-interest" to the property even before the foreclosure sale. Therefore, by operation of law, Mahinay was legally entitled to redeem the property.[44] However, considering that one (1) year period of redemption had already lapsed, Mahinay could no longer exercise his right of redemption.[45]

Despite Dura Tire's refusal to accept his offer to pay Move Overland's unpaid credit purchases, the trial court said that "there was nothing to stop [Mahinay] from redeeming the property as soon as he became aware of the foreclosure sale. [Mahinay] could have . . . filed an action to compel [Dura Tire] to accept payment by way of redemption."[46]

---

[40] *Id*. at 111-122, Answer with Special and Affirmative Defenses and Counterclaims.

[41] *Id*. at 114-115.

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

[43] *Id.* at 34.

[44] *Id*. at 35.

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

[46] *Id*. at 37.

Hence, in the Judgment on the Pleadings[47] dated April 13, 2010, Branch 20 of the Regional Trial Court of Cebu City dismissed Mahinay's Complaint for judicial declaration of right to redeem. The dispositive portion of the Judgment read:

> Upon the foregoing considerations, the court finds no factual and legal basis to grant the plaintiff's plea to be allowed to redeem the foreclosed property subject of this case.
>
> IN CONSEQUENCE, Judgment is hereby rendered DISMISSING the plaintiff's Complaint.
>
> SO ORDERED.[48] (Emphasis in the original)

Mahinay filed a Motion for Reconsideration, which the trial court denied in the Order[49] dated September 2, 2010.

On a pure question of law, Mahinay directly filed a Petition for Review on Certiorari[50] before this Court. Dura Tire filed its Comment,[51] to which Mahinay filed a Reply.[52]

Mahinay maintains that he should be allowed to redeem the property he bought from A&A Swiss despite the lapse of one (1) year from the registration of the Certificate of Sale on February 20, 1995. Mahinay primarily argues that the one (1)-year period of redemption was tolled when he filed the Complaint for annulment of foreclosure sale on March 23, 1995 and resumed when the June 16, 2006 Decision of the Court of Appeals became final and executory on August 8, 2007.[53] As basis, Mahinay cites *Consolidated Bank & Trust Corp. v. Intermediate Appellate Court*.[54]

---

[47] *Id.* at 34-37.

[48] *Id.* at 37.

[49] *Id*. at 38.

[50] *Id*. at 9-32.

[51] *Id.* at 153-173.

[52] *Id.* at 174-190, Reply to the Comment.

[53] *Id.* at 27-29.

[54] 234 Phil. 582 (1987) [Per *J*. Gutierrez, Jr., First Division].

In the alternative, Mahinay contends that the one (1)-year period of redemption should be counted from the time the June 16, 2006 Decision of the Court of Appeals became final and executory on August 8, 2007. Mahinay theorizes that his right of redemption only arose when he was judicially declared "entitled to redeem the property" in this decision.[55]

Since he filed his Complaint for judicial declaration of right to redeem on August 24, 2007, only 16 days after August 8, 2007, Mahinay claims that he exercised his right of redemption within the one (1)-year period under Act No. 3135.[56]

Dura Tire counters that nothing prevented Mahinay from exercising his right of redemption within one (1) year from the registration of the Certificate of Sale.[57] Dura Tire argues that Mahinay's filing of an action for annulment of foreclosure sale did not toll the running of the redemption period because the law does not allow its extension.[58] Since the one (1)-year period of redemption already lapsed, Dura Tire maintains that Mahinay can no longer redeem the property at the bid price paid by the purchaser.

The sole issue for this Court's resolution is whether the one (1)-year period of redemption was tolled when Mahinay filed his Complaint for annulment of foreclosure sale.

This Petition must be denied.

Contrary to Mahinay's claim, his right to redeem the mortgaged property did not arise from the Court of Appeals' "judicial declaration" that he was a "substitute mortgagor" of A&A Swiss. By force of law, specifically, Section 6 of Act No. 3135, Mahinay's right to redeem arose when the mortgaged property was extrajudicially foreclosed and sold at public auction.

---

[55] *Id*. at 20-22.

[56] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

[57] *Id*. at 163.

[58] *Id*. at 168-170.

There is no dispute that Mahinay had a lien on the property subsequent to the mortgage. Consequently, he had the right to buy it back from the purchaser at the sale, Dura Tire in this case, "from and at any time within the term of one year from and after the date of the sale." Section 6 of Act No. 3135[59] provides:

> Section 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.

The "date of the sale" referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not "'take effect as a conveyance, or bind the land' until it is registered."[60]

The right of redemption being statutory,[61] the mortgagor may compel the purchaser to sell back the property within the one (1)-year period under Act No. 3135. If the purchaser refuses to sell back the property, the mortgagor may tender payment to the Sheriff who conducted the foreclosure sale.[62] Here, Mahinay should have tendered payment to Sheriff Laurel instead

---

[59] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

[60] See *Reyes v. Noblejas*, 129 Phil. 256, 262 (1967) [Per *J*. Angeles, *En Banc*] citing *Salazar v. Flor de Lis Meneses*, 118 Phil. 512, 514 (1963) [Per *J*. Dizon, *En Banc*]. See also *Agbulos v. Alberto*, 115 Phil. 777, 780 (1962) [Per *J.* Dizon, *En Banc*].

[61] *Mateo v. Court of Appeals,* 99 Phil. 1042 (1956) [Per *J.* A.J. Reyes, *En Banc*].

[62] See *Spouses Natino v. Intermediate Appellate Court*, 274 Phil. 602, 611 (1991) [Per *J.* Davide, Jr., Third Division].

of insisting on directly paying Move Overland's unpaid credit purchases to Dura Tire.

As early as 1956, this Court held in *Mateo v. Court of Appeals*[63] that "the right of redemption . . . must . . . be exercised in the mode prescribed by the statute."[64] The one (1)-year period of redemption is fixed, hence, non-extendible, to "avoid prolonged economic uncertainty over the ownership of the thing sold."[65]

Since the period of redemption is fixed, it cannot be tolled or interrupted by the filing of cases to annul the foreclosure sale or to enforce the right of redemption. "To rule otherwise . . . would constitute a dangerous precedent. A likely offshoot of such a ruling is the institution of frivolous suits for annulment of mortgage intended merely to give the mortgagor more time to redeem the mortgaged property." [66]

In *CMS Stock Brokerage, Inc. v. Court of Appeals*,[67] Rosario Sandejas (Sandejas) mortgaged two (2) parcels of land in favor of the Bank of the Philippine Islands. She subsequently mortgaged the same parcels of land to CMS Stock Brokerage, Inc. In 1971, CMS Stock Brokerage, Inc. extrajudicially foreclosed the properties, which were sold at a public auction. The certificate of sale was registered on May 19, 1971.[68]

More than a year after the registration of the Certificate of Sale, or on November 15, 1972, Sandejas wrote the president

---

[63] 99 Phil. 1042 (1956) [Per *J.* A.J. Reyes, *En Banc*].

[64] *Id.*

[65] *BPI Family Savings Bank, Inc. v. Spouses Veloso,* 479 Phil. 627, 635 (2004) [Per *J.* Corona, Third Division].

[66] See *Union Bank of the Phils. v. Court of Appeals*, 412 Phil. 64, 75 (2001) [Per *J.* De Leon, Jr., Second Division]. The case involved the right of redemption for property foreclosed as full or partial payment of an obligation to any bank governed by Section 78 of the General Banking Act. Section 78 of the General Banking Act and Section 6 of Act No. 3135 both provide for a fixed one (1)-year period of redemption.

[67] 341 Phil. 787 (1997) [Per *J.* Melo, Third Division].

[68] *Id*. at 791.

of the CMS Stock Brokerage, Inc., requesting for three (3) years within which to redeem the properties she mortgaged to it.[69] The president allegedly agreed, even giving her five (5) more years to redeem the properties.[70]

However, on February 2, 1973, first mortgagee Bank of the Philippine Islands extrajudicially foreclosed the properties.[71] Despite the third-party claim and action for quieting of title filed by Sandejas, the Sheriff proceeded with the public auction with Carolina Industries, Inc. emerging as the highest bidder.[72] The certificate of sale was issued to Carolina Industries, Inc. and was registered on December 16, 1983.[73]

The action for quieting of title was ultimately resolved in favor of CMS Stock Brokerage, Inc. In G.R. No. 101351, this Court held that CMS Stock Brokerage, Inc. was "the real owner" of the properties, not Sandejas.[74]

Nine (9) years after the registration of the Certificate of Sale in favor of Carolina Industries, or on December 15, 1992, CMS Stock Brokerage, Inc. tendered ₱2,341,166.48 as redemption money with the Clerk of Court. It then filed with the trial court a motion to require the Sheriff to execute a certificate of redemption.[75] The trial court, however, denied the motion, reasoning the right of redemption of CMS Stock Brokerage, Inc. had already lapsed.[76]

This Court affirmed the trial court's decision. On whether the quieting of title action filed by Sandejas tolled the running

---

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id*. at 792-793.

[73] *Id*. at 793.

[74] *Id*.

[75] *Id*. at 793.

[76] *Id*. at 790.

of the one (1)-year period of redemption, this Court ruled in the negative. According to this Court, "the issue of ownership insofar as [CMS Stock Brokerage, Inc.'s] right of redemption as judgment debtor is concerned, has no bearing whatsoever, so as have the effect of tolling or interrupting the running of the 12-month redemption period."[77] This Court noted that the decision on the quieting of title case would only affect Sandejas' title to the property.

In *Spouses Pahang v. Judge Vestil*,[78] where spouses Antonio and Lolita Pahang (the Spouses Pahang) were represented by Mahinay's law firm,[79] the Spouses Pahang loaned ₱1,500,000.00 from Metrobank and mortgaged a parcel of land as security for the mortgage.[80] When the Spouses Pahang failed to pay their loan, Metrobank extrajudicially foreclosed the property. At the public sale, Metrobank emerged as the highest bidder and a corresponding certificate of sale was issued to it. The Certificate of Sale was registered on January 27, 1998.[81]

On December 29, 1998, Metrobank wrote the Spouses Pahang to remind them of the expiration of their right of redemption on January 27, 1999.[82] Ignoring Metrobank's note, the Spouses Pahang instead filed an action for annulment of extrajudicial sale, contending that Metrobank charged them excessive interests and other fees. They likewise prayed in their Complaint that they be allowed to redeem their mortgaged property.[83]

The right of redemption of the Spouses Pahang thus expired on January 27, 1999. Metrobank consolidated its ownership over the properties, and a transfer certificate of title was issued

---

[77] *Id.* at 799.

[78] 478 Phil. 189 (2004) [Per *J.* Callejo, Sr., Second Division].

[79] *Id*. at 191.

[80] *Id*. at 192.

[81] *Id.*

[82] *Id.*

[83] *Id*. at 192-193.

in its name. It subsequently filed a petition for issuance of a writ of possession.[84]

The Spouses Pahang opposed the petition, arguing that their pending action for annulment of extrajudicial sale tolled the running of the one (1)-year period of redemption.[85]

Rejecting the argument of the Spouses Pahang, this Court held that the "filing of an action by the redemptioner to enforce his right to redeem does not suspend the running of the statutory period to redeem the property."[86] This Court added that upon the lapse of the one (1)-year period of redemption, it is the trial court's ministerial duty to issue a writ of possession to the purchaser at the foreclosure sale.[87]

Here, the Certificate of Sale in favor of Dura Tire was registered on February 20, 1995. Mahinay, as the successor-in-interest of previous owner A&A Swiss, had one (1) year from February 20, 1995, or on February 20, 1996,[88] to exercise his right of redemption and buy back the property from Dura Tire at the bid price of ₱950,000.00.

With Mahinay failing to redeem the property within the one (1)-year period of redemption, his right to redeem had already lapsed. As discussed, the pendency of an action to annul the foreclosure sale or to enforce the right to redeem does not toll the running of the period of redemption. The trial court correctly

---

[84] *Id.* at 193.

[85] *Id*. at 194.

[86] *Id*. at 199.

[87] *Id.*

[88] CIVIL CODE, Art. 13 provides:

Article 13. 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.

dismissed the Complaint for judicial declaration of right to redeem.

Mahinay nevertheless cites *Consolidated Bank & Trust Corp. v. Intermediate Appellate Court*[89] in arguing that the one (1)-year period of redemption was tolled when he filed the Complaint for annulment of foreclosure sale. In *Consolidated Bank*, Nicos Industrial Corporation mortgaged parcels of land to Consolidated Bank to secure loans totalling ₱4,076,518.64. When the corporation failed to pay, Consolidated Bank applied for the extrajudicial foreclosure of the properties.[90]

Writs of attachment were issued in favor of Consolidated Bank and Notices of Levy were annotated on the transfer certificates of title covering the mortgaged properties. However, a year later, the properties were subsequently foreclosed by first mortgagee United Coconut Planters Bank, and a certificate of sale was issued to the latter on September 6, 1983. A month later, the United Coconut Planters Bank sold the properties to Manuel Go, who, in turn, sold the properties to Golden Star Industrial Corporation. Nicos then executed a Waiver of Right of Redemption in favor of Golden Star.[91]

Golden Star then filed a petition for issuance of a writ of possession over the properties. The writ of possession was issued, allowing Golden Star to seize the properties under the custody of the Sheriff of Manila.[92]

Consolidated Bank then filed a motion to annul the writ of possession on November 21, 1983. On a petition for review on certiorari before this Court, Golden Star argued, among others, that Consolidated Bank had no right to possess the properties. At that time, one (1) year from the registration of the certificate of sale had already lapsed.[93]

---

[89] 234 Phil. 582 (1987) [Per *J.* Gutierrez, Jr., First Division].

[90] *Id*. at 583-584.

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

[92] *Id*. at 585.

[93] *Id*. at 585-587.

This Court held that Consolidated Bank's filing of the motion to annul the writ of possession tolled the running of the one (1)-year period of redemption.[94] This Court found that Nicos and Golden Star "conspired to defeat [Consolidated Bank's] lien on the attached properties and to deny the latter its right of redemption."[95] Considering that Consolidated Bank filed its motion to annul the writ of possession on November 21, 1983, just two (2) months after the certificate of sale was registered on September 6, 1983, this Court held that Consolidated Bank may still redeem the properties from Golden Star.[96]

Consolidated Bank is not precedent for the present case.

Consolidated Bank cited *Ong Chua v. Carr*,[97] an inapplicable case, as basis for ruling that "the pendency of an action tolls the term of the right of redemption."[98] *Ong Chua* involved a sale with right to repurchase,[99] and the period of the "right of redemption" referred to in that case was governed by the provisions of the Civil Code on conventional redemption, specifically, Articles 1601 and 1606.[100] On the other hand, the

---

[94] *Id*. at 590.

[95] *Id*. at 589.

[96] *Id*. at 591.

[97] 53 Phil. 975 (1929) [Per *J*. Ostrand, *En Banc*].

[98] *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court*, 234 Phil. 582, 590 (1987) [Per *J*. Gutierrez, Jr., First Division] citing *Ong Chua v. Carr*, 53 Phil. 975, 983 (1929) [Per *J*. Ostrand, *En Banc*].

[99] *Ong Chua v. Carr*, 53 Phil. 975, 976 (1929) [Per *J*. Ostrand, *En Banc*].

[100] CIVIL CODE, Arts. 1601 and 1606 provide:

Article 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon.

. . . .

present case involves the redemption of an extrajudicially foreclosed property. The right of redemption involved in this case is governed by Section 6 of Act No. 3135.

The respondents in *Consolidated Bank* actively denied the petitioner its right of redemption.[101] This Court, therefore, held that the petitioner in *Consolidated Bank* was a victim of fraud.[102] No such fraud exists in the present case.

Moreover, the previously discussed cases of *CMS Stock Brokerage*[103] and *Spouses Pahang*[104] were promulgated later than *Consolidated Bank*.[105] That the pendency of an action questioning the legality of the foreclosure sale or enforcing the right of redemption does not toll the running of the period of redemption must be the controlling doctrine.

All told, the trial court correctly dismissed Mahinay's Complaint for judicial declaration of right to redeem. To grant the Complaint would have extended the period of redemption for Mahinay, in contravention of the fixed one (1)-year period provided in Act No. 3135.

Article 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

[101] *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court*, 234 Phil. 582, 589 (1987) [Per *J.* Gutierrez, Jr., First Division]. *See CMS Stock Brokerage, Inc. v. Court of Appeals,* 341 Phil. 787, 800 (1997) [Per *J.* Melo, Third Division].

[102] See *CMS Stock Brokerage, Inc. v. Court of Appeals,* 341 Phil. 787, 800 (1997) [Per *J.* Melo, Third Division].

[103] *CMS Stock Brokerage* was promulgated in 1997.

[104] *Spouses Pahang* was promulgated in 2004.

[105] *Consolidated Bank* was promulgated in 1987.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Judgment on the Pleadings dated April 13, 2010 and Order dated September 2, 2010 rendered by Branch 20 of the Regional Trial Court of Cebu City in Civil Case No. CEB-33639 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

FIRST DIVISION

[G.R. No. 198485. June 5, 2017]

MARUBENI PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent.*

SYLLABUS

1. **TAXATION; TAX REFUND; PRESCRIPTIVE PERIOD FOR FILING JUDICIAL CLAIM; COMPLIANCE WITH THE 120+30 DAY PERIODS IS MANDATORY AND JURISDICTIONAL; A JUDICIAL CLAIM FOR REFUND FILED 29 DAYS AFTER FILING THE ADMINISTRATIVE CLAIM WAS PREMATURE AND THE COURT OF TAX APPEALS WAS DEVOID OF ANY JURISDICTION OVER THE PETITION.—** Section 112 of the 1997 Tax Code provides for the rules on claiming refunds of and/or the issuance of a TCC for unutilized input VAT, the pertinent portions of which read as follows: x x x (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit

certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.** x x x According to the Court in *Mindanao II,* it is the above-quoted Section 112 (C) of the 1997 Tax Code that applies to the judicial claim for refund, and, citing *San Roque,* compliance with the 120+30 day periods is mandatory and jurisdictional. x x x Marubeni therefore failed to comply with the mandatory and jurisdictional requirement of Section 112 (C) when it filed its petition for review with the CTA on April 25, 2002, or just 29 days after filing its administrative claim before the BIR on March 27, 2002. x x x In fine, Marubeni's judicial claim for refund was, as correctly found by the CTA *En Banc,* premature and the CTA was devoid of any jurisdiction over the petition for review because of Marubeni's failure to strictly comply with the 120+30 day periods required by Section 112 (C) of the 1997 Tax Code. To recall, Marubeni filed its administrative claim on March 27, 2002. The CIR had 120 days from that date within which to rule on that administrative claim. But within 29 days from March 27, 2002, or on April 25, 2002, Marubeni already filed its petition for review with the CTA.

2. **ID.; ID.; ID.; ID.; ID.; FAILURE OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) TO OBJECT TO THE ISSUE OF PREMATURITY CANNOT BE DEEMED A WAIVER OF SUCH OBJECTION.—** In *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue,* the Court, citing *San Roque,* ruled that the failure to observe the 120 days prior to filing of a judicial claim for refund is not a mere non-exhaustion of administrative remedies but is jurisdictional in nature x x x Accordingly, the CIR's failure to raise the issue of compliance with the 120+30 day periods in its Answer to Marubeni's petition for review cannot be deemed a waiver of such objection. As the Court ruled in *Applied Food,* the periods are jurisdictional, and "x x x the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio.* Marubeni cannot therefore escape compliance with the 120+30 day periods. Its failure to observe the periods is fatal to its judicial claim for refund.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioner.
Albert C. Arpon for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Marubeni Philippines Corporation (Marubeni), assailing the Decision[2] dated March 23, 2011 and Resolution[3] dated August 31, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 557. The CTA *En Banc* affirmed with modification the CTA Second Division's Decision[4] dated June 2, 2009 in C.T.A. Case No. 6469. The CTA Second Division dismissed Marubeni's claim for refund and/or issuance of a tax credit certificate (TCC) for having been filed beyond the two-year prescriptive period. The CTA *En Banc,* on the other hand, dismissed Marubeni's claim for refund and/or issuance of a TCC because it was premature.

---

[1] *Rollo,* pp. 10-51.

[2] *Id*. at 57-92. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Esperanza R. Fabon-Victorino, concurring; Presiding Justice Ernesto D. Acosta, concurring and dissenting; and Associate Justices Lovell R. Bautista and Amelia R. Cotangco-Manalastas, dissenting.

[3] *Id*. at 114-127. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; Presiding Justice Ernesto D. Acosta, Associate Justices Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas, concurring and dissenting; and Associate Justice Lovell R. Bautista, dissenting.

[4] *Id*. at 135-151. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

Facts

Marubeni is a domestic corporation duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.[5]

On April 25, 2000, Marubeni filed its Quarterly VAT Return for the 1st quarter of Calendar Year (CY) 2000 with the BIR.[6]

On March 27, 2002, Marubeni filed with the BIR a written claim for a refund and/or the issuance of a TCC, which it later amended on April 25, 2002, reducing its claim to ₱3,887,419.31.[7] On the same date, Marubeni filed a petition for review before the CTA claiming a refund and/or issuance of a TCC in the amount of ₱3,887,419.31.[8]

During the proceedings in the CTA, Marubeni presented its witnesses and offered its evidence while respondent Commissioner of Internal Revenue (CIR) submitted the case for decision based on the pleadings.[9] After submitting its Memorandum, Marubeni moved to be allowed to present additional evidence, which the CTA Second Division granted.[10]

On December 8, 2008, Marubeni filed its Memorandum and on January 15, 2009, the case was deemed submitted for decision.[11]

In a Decision dated June 2, 2009, the CTA Second Division dismissed Marubeni's judicial claim, the dispositive portion of which states:

---

[5] *Id.* at 137.

[6] *Id*.

[7] *Id*. at 138-139.

[8] *Id*. at 150.

[9] *Id*. at 141.

[10] *Id*.

[11] *Id.* at 142.

WHEREFORE, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED.[12]

The CTA Second Division ruled that following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[13] Marubeni timely filed its administrative claim for refund and/or the issuance of a TCC on March 27, 2002, which was within the two-year period from the close of the 1st quarter of CY 2000,[14] but that Marubeni's judicial claim for refund and/or issuance of TCC that was filed on April 25, 2002 (or the same day Marubeni amended its administrative claim for a refund and/or the issuance of a TCC to ₱3,887,419.31) was late because this should have been filed also within the two-year period from the close of the 1st quarter of CY 2000.[15]

Marubeni moved for reconsideration, but this was denied by the CTA Second Division in its Resolution[16] dated October 20, 2009.

Marubeni then elevated the matter to the CTA *En Banc,* raising the following arguments: (1) the two-year prescriptive period for the filing of the administrative and judicial claims for refund and/or issuance of TCC is reckoned from the date of the filing of the Quarterly VAT Return and payment of the output tax as held by the Court in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*;[17] (2) *Mirant* could not validly overturn the ruling in *Atlas*; and (3) assuming that *Mirant* validly overturned the ruling in *Atlas*, the ruling should be applied prospectively and should not be made to apply to pending judicial claims for refund of excess input VAT.[18]

---

[12] *Id.* at 151.

[13] 586 Phil. 712 (2008).

[14] *Rollo*, pp. 148-150.

[15] *Id*. at 150.

[16] *Id*. at 153-161.

[17] 551 Phil. 519 (2007).

[18] *Rollo*, p. 64.

On March 23, 2011, the CTA *En Banc* rendered a Decision affirming with modification the Decision and Resolution of the CTA Second Division, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the petition is **DENIED**. Accordingly, the Decision of the former Second Division of this Court in CTA Case No. 6469 dated June 2, 2009 and its Resolution dated October 20, 2009 are hereby **AFFIRMED**, with the modification that the dismissal of the Petition for Review is on the ground for having been prematurely filed. No pronouncement as to costs.
>
> **SO ORDERED**.[19]

The CTA *En Banc* agreed with the CTA Second Division that Marubeni timely filed its administrative claim for refund.[20] But as to Marubeni's judicial claim for refund, the CTA *En Banc* ruled that following Section 112 (D) of the National Internal Revenue Code (1997 Tax Code) and the Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[21] the filing of the petition for review with the CTA was premature. According to the CTA *En Banc,* Marubeni should have filed its petition for review with the CTA 30 days from receipt of the decision of the CIR denying the claim or after the expiration of the 120-day period from the filing of the administrative claim with the CIR.[22]

Marubeni moved for reconsideration but the CTA *En Banc* denied this in a Resolution dated August 31, 2011.

Hence, this petition.

Issues

Marubeni raised the following issues:

a. Whether *Aichi* is applicable to its claim for refund;

---

[19] *Id*. at 91.

[20] *Id*. at 85.

[21] 646 Phil. 710 (2010).

[22] *Rollo*, pp. 85-87.

b. Whether *Aichi* should only be applied prospectively; and,

c. Whether the CIR waived the defense of non-exhaustion of administrative remedies.[23]

The Court's Ruling

The petition lacks merit.

Prescriptive period for filing of judicial claim for refund.

The first and second issues are discussed together.

Marubeni claims that the Court's ruling in *Atlas* should be the one applicable to it instead of *Aichi*.[24] In *Atlas,* the Court held that the two-year period for the filing of claims for refund and/or issuance of TCC for input VAT must be counted from the date of filing of the quarterly VAT return. On the other hand, in *Aichi*, the Court ruled that the compliance with the 120+30 day periods in Section 112 (C) of the 1997 Tax Code were mandatory and jurisdictional.

Marubeni thus argues that the prospective application of *Aichi* means that *Aichi* will only be applied to claims for refund that were filed with the CTA after the promulgation of *Aichi* (which was promulgated by the Court on October 6, 2010).[25] And since Marubeni filed its petition with the CTA on April 25, 2002, the Court's ruling in *Atlas,* and not *Aichi,* should be applied to it.

This claim is wrong.

The issue of the retroactive application of *Aichi* and the applicability of *Atlas* was also raised in *Mindanao II Geothermal*

---

[23] *Id*. at 22.

[24] *Id*. at 28-30.

[25] See *id*. at 49.

Partnership v. Commissioner of Internal Revenue.[26] The facts and issue here and in *Mindanao II* are identical, except only for the covered taxable period — Marubeni's claim involved the 1st quarter of CY 2000, while the claim in *Mindanao II* involved different quarters of CY 2003. Thus, the ruling of the Court in *Mindanao II* squarely applies here.

The Court ruled in *Mindanao II* that a taxpayer cannot claim that *Atlas*, which was promulgated on June 8, 2007, is controlling on the timeliness of a judicial claim that was filed prior to June 8, 2007. According to the Court, it is the 1997 Tax Code, which took effect on January 1, 1998, that applies to the taxpayer, thus:

> When Mindanao II and Mindanao I filed their respective administrative and judicial claims in 2005, neither *Atlas* nor *Mirant* has been promulgated. ***Atlas* was promulgated on 8 June 2007, while *Mirant* was promulgated on 12 September 2008. It is therefore misleading to state that *Atlas* was the controlling doctrine at the time of filing of the claims.** The 1997 Tax Code, which took effect on 1 January 1998, was the applicable law at the time of filing of the claims in issue. x x x[27] (Emphasis in the original)

In this regard, the Court had already clarified in *Commissioner of Internal Revenue v. San Roque Power Corp.*,[28] that *Atlas* did not interpret, expressly or impliedly, the 120+30 day periods, thus:

> San Roque cannot also claim [to] being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated**. The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120-day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the *Atlas* doctrine merely stated that the two-year prescriptive period should be counted from the

---

[26] 706 Phil. 48 (2013).

[27] *Id*. at 74.

[28] 703 Phil. 310 (2013).

date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30 day periods.**[29] (Emphasis in original.)

Similarly, it was misleading for Marubeni to invoke *Atlas* given that *Atlas* could not have been applicable as it was promulgated years after Marubeni had filed its administrative and judicial claims in 2002; accordingly, it cannot escape the applicability of the 1997 Tax Code.

Section 112 of the 1997 Tax Code[29-a] provides for the rules on claiming refunds of and/or the issuance of a TCC for unutilized input VAT, the pertinent portions of which read as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof**.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,

---

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

[29-a] As amended by R.A. No. 9337.

appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

According to the Court in *Mindanao II,* it is the above-quoted Section 112 (C) of the 1997 Tax Code that applies to the judicial claim for refund, and, citing *San Roque*,[30] compliance with the 120+30 day periods is mandatory and jurisdictional. Thus:

In determining whether the claims for the second, third and fourth quarters of 2003 have been properly appealed, we still see no need to refer to either *Atlas* or *Mirant*, or even to Section 229 of the 1997 Tax Code. The second paragraph of Section 112 (C) of the 1997 Tax Code is clear: "In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The mandatory and jurisdictional nature of the 120+30 day periods was explained in *San Roque*:

> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably,

---

[30] *Supra* note 28.

San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

x x x x x x x x x

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C). (Emphases in the original; citations omitted) [31]

Marubeni therefore failed to comply with the mandatory and jurisdictional requirement of Section 112 (C) when it filed its petition for review with the CTA on April 25, 2002, or just 29

---

[31] *Supra* note 26, at 78-81.

days after filing its administrative claim before the BIR on March 27, 2002.

Since Marubeni filed its judicial claim for refund on April 25, 2002, it could not benefit from BIR Ruling No. DA-489-03 that was subsequently issued on December 10, 2003. As the Court ruled in *San Roque*:

> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. **Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional**.[32] (Emphasis and underscoring supplied.)

In fine, Marubeni's judicial claim for refund was, as correctly found by the CTA *En Banc*, premature and the CTA was devoid of any jurisdiction over the petition for review because of Marubeni's failure to strictly comply with the 120+30 day periods required by Section 112 (C) of the 1997 Tax Code. To recall, Marubeni filed its administrative claim on March 27, 2002. The CIR had 120 days from that date within which to rule on that administrative claim. But within 29 days from March 27, 2002, or on April 25, 2002, Marubeni already filed its petition for review with the CTA.

Marubeni could also not benefit from BIR Ruling No. DA-489-03 because that ruling was issued on December 10, 2003, or after Marubeni had already filed its petition for review with the CTA on April 25, 2002.

Waiver of objection to non-exhaustion of administrative remedies.

---

[32] *Supra* note 28, at 371.

Marubeni also argues that even assuming that the 120+30 day periods are applicable, failure to comply with said periods violates only the rule on non-exhaustion of administrative remedies which can be waived when not objected to.[33] Stated otherwise, Marubeni posits that the CIR's failure to raise the issue of prematurity in its Answer to Marubeni's petition before the CTA should be deemed a waiver of that objection.[34] Again, this has no basis.

In *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue,*[35] the Court, citing *San Roque*, ruled that the failure to observe the 120 days prior to filing of a judicial claim for refund is not a mere non-exhaustion of administrative remedies but is jurisdictional in nature, thus:

> Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, both periods are hereby rendered jurisdictional. Failure to observe 120 days prior to the filing of a judicial claim is not a mere non-exhaustion of administrative remedies, but is likewise considered jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA. In both instances, whether the CIR renders a decision (which must be made within 120 days) or there was inaction, the period of 120 days is material.[36]

Accordingly, the CIR's failure to raise the issue of compliance with the 120+30 day periods in its Answer to Marubeni's petition for review cannot be deemed a waiver of such objection. As the Court ruled in *Applied Food,* the periods are jurisdictional, and "x x x the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*."[37] Marubeni cannot therefore escape compliance

---

[33] See *rollo*, pp. 30-32, 225-227.

[34] *Id.* at 31.

[35] 720 Phil. 782 (2013).

[36] *Id.* at 794.

[37] *Id*. at 790.

with the 120+30 day periods. Its failure to observe the periods is fatal to its judicial claim for refund.[38]

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED.** The Decision dated March 23, 2011 and the Resolution dated August 31, 2011 of the CTA *En Banc* in CTA EB Case No. 557 are hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 204906. June 5, 2017]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) Secretary SIMEON A. DATUMANONG; DPWH UNDERSECRETARY MANUEL M. BONOAN; DPWH CENTRAL OFFICE DIRECTOR IV CLARITA A. BANDONILLO; DPWH REGION VI REGIONAL DIRECTOR WILFREDO AGUSTINO; DPWH ILOILO CITY DISTRICT ENGINEER VICENTE M. TINGSON, JR.; and ENGINEERS RUBY P. LAGOC, MAVI V. JERECIA and ELIZABETH GARDOSE, *petitioners, vs.* **MARIA ELENA L. MALAGA,** *respondent.*

---

[38] See *id.* at 795.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT REFORM ACT (R.A. 9184); BEFORE THE GOVERNMENT PROJECT IS AWARDED TO THE LOWEST BIDDER, HIS BID MUST UNDERGO A MANDATORY POST-QUALIFICATION PROCEDURE; EFFECTS OF NON-COMPLIANCE WITH THE REQUIREMENT; RESPONDENT HAS NO CAUSE OF ACTION AGAINST PETITIONERS.—** [B]efore a government project is awarded to the lowest calculated bidder, his bid must undergo a mandatory post-qualification procedure whereby the "procuring entity verifies, validates, and ascertains all statements made and documents submitted by the bidder with the lowest calculated or highest rated bid using a non[-] discretionary criteria as stated in the bidding documents." x x x, In one case, bidders in a government project sought to enjoin the award and implementation thereof, arguing that as the bidders who submitted the lowest numerical bid, they were entitled to the award. This Court disagreed, for the reason, among others, that mere submission of the lowest bid did not automatically entitle them to an award; their bid must still undergo post-qualification/evaluation. x x x From the foregoing, it must be concluded that since respondent's lowest calculated bid for the subject project did not undergo the required post-qualification process, then she cannot claim that the project was awarded to her. And if the project was never awarded to her, then she has no right to undertake the same. If she has no right to the project, then she cannot demand indemnity for lost profits or actual damages suffered in the event of failure to carry out the same. Without a formal award of the project in her favor, such a demand would be premature. Consequently, she has no right of action against petitioners, and no cause of action in Civil Case No. 27059. Indeed, "only when there is an invasion of primary rights, not before, does the adjective or remedial law become operative. Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground."

2. **ID.; ID.; ID.; ID.; ID.; RESPONDENT CANNOT ALSO CLAIM FOR DAMAGES UNDER ARTICLE 27 OF THE CIVIL CODE; PROPER REMEDY FOR RESPONDENT.—** It may

be argued that respondent's claim for damages is likewise potentially premised on Article 27 of the Civil Code, which provides that – Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken. In this case, respondent may claim that individual petitioners' refusal or neglect to award the project to her is the cause of her injury. However, this Court still finds that respondent has no cause of action. Individual petitioners could not have awarded the project to her precisely for the reason that her bid still had to undergo a post-qualification procedure required under the law. However, such post-qualification was overtaken by events, particularly Datumanong's November 7, 2001 Memorandum. In short, respondent's causes of action solely and primarily based on a supposed award, actual or potential, do not exist. This is so for the precise reason that such an award and the whole bidding process for that matter, no longer exist, as they were mooted and superseded by the DPWH's decision to undertake the subject project by administration, as well as by the reservation contained in the Invitation to Bid that at any time during the procurement process, government has the right to reject any or all bids. The proper remedy for respondent should have been to seek reconsideration or the setting aside of Datumanong's November 7, 2001 Memorandum, and then a reinstatement of the bidding or post-qualification process with a view to securing an award of the contract and notice to proceed therewith. After all, said Memorandum enjoys the same presumption of regularity that is attached to all official acts of government.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
E.C. Antiquiera & Associates Law Offices for respondent.

DECISION

DEL CASTILLO, *J*.:

Assailed in this Petition for Review on *Certiorari*[1] are the March 26, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00889 which set aside the March 23, 2004 Order[3] of the Regional Trial Court (RTC) of Iloilo City, Branch 29 in Civil Case No. 27059, and the CA's November 9, 2012 Resolution[4] denying herein petitioners' Motion for Reconsideration.[5]

Factual Antecedents

Respondent Maria Elena L. Malaga owns B.E. Construction, a private contractor and the lowest bidder for two concreting projects of the Department of Public Works and Highways (DPWH), particularly:

a. Mandurriao-San Miguel Road, Barangay Hibao-an Section in Iloilo City; and

b. Mandurriao-San Miguel Road, Guzman-Jesena Section in Iloilo City as well.

The bidding for the above projects was held on November 6, 2001, and was based upon an August 2001 published invitation to bid.

However, it appears that after the publication of the invitation to bid but prior to the scheduled November 6, 2001 bidding,

---

[1] *Rollo*, pp. 15-52.

[2] *Id*. at 54-70; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino.

[3] *Id*. at 85-86; penned by Judge Rene B. Honrado.

[4] *Id*. at 72-73; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap.

[5] *Id*. at 74-84.

the road condition of the Mandurriao-San Miguel Road in *Barangay* Hibao-an severely deteriorated to an almost impassable state on account of the prevailing typhoon and monsoon season, prompting calls for immediate repairs and other appropriate action from local government units (LGUs), a Member of the House of Representatives, and concerned private citizens and interest groups.[6] Petitioner Vicente M. Tingson, Jr. (Tingson), DPWH Iloilo City District Engineer, thus requested his immediate superior, herein petitioner and DPWH Region VI Director Wilfredo B. Agustino (Agustino), that the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section and Mandurriao-San Miguel Road, Guzman-Jesena Section projects be implemented by administration, that is, that these projects be undertaken directly and immediately by the government, on account of urgency, and thus taken out of the list of projects bid out to private contractors. In turn, Agustino sent an August 23, 2001 1st Indorsement to then DPWH Secretary Simeon A. Datumanong (Datumanong), reiterating Tingson's request that the said projects be implemented by administration.[7]

On August 23 and 24, 2001, DPWH Undersecretary and herein petitioner Manuel M. Bonoan (Bonoan) personally inspected the area covered by the proposed projects, and in an August 29, 2001 Memorandum to Datumanong, he recommended that the subject projects be undertaken by administration.[8]

Agustino sent an October 23, 2001 letter to Datumanong reiterating his earlier request contained in the August 23, 2001 1st Indorsement.[9]

Since no response was forthcoming from Datumanong, the DPWH Regional Office VI proceeded with the dropping and opening of bids as scheduled. Thus, respondent won as the lowest bidder for the above-mentioned projects.

---

[6] *Id.* at 118-121, 122-123.

[7] *Id.* at 117.

[8] *Id*. at 122.

[9] *Id*. at 125.

On November 7, 2001, Datumanong issued a Memorandum[10] of even date approving the DPWH Regional Office VI request, but only with respect to the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section considering the exigent circumstances prevailing. The DPWH Regional Office VI received a copy of this Memorandum on November 12, 2001.

Pursuant to Datumanong's November 7, 2001 Memorandum, herein petitioners Ruby P. Lagoc (Lagoc), Mavi V. Jerecia (Jerecia) and Elizabeth Gardose (Gardose), Bids and Awards Committee members, conducted the post-evaluation/qualification of respondent's firm, but only for the Mandurriao-San Miguel Road, Guzman-Jesena Section project. Respondent was declared post-qualified for the project, and the same was awarded to her.

On November 15, 2001, Lagoc informed respondent that the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section project may not be awarded to her, in view of Datumanong's November 7, 2001 Memorandum. Respondent replied with formal written demands that the project be awarded to her in spite of Datumanong's directive, under pain of civil action and claim for damages.[11] Lagoc wrote back disavowing any liability and claiming that Datumanong's directive was a supervening event that prevented the award of the subject project to respondent, and until it is nullified or set aside, the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section project shall be undertaken by administration as directed.[12]

Ruling of the Regional Trial Court

On February 14, 2002, respondent filed Civil Case No. 27059 with the RTC. In her Complaint[13] for damages against the herein individual petitioners, respondent claimed that the individual petitioners, "acting together, in cooperation and collusion with

---

[10] *Id*. at 126-127.

[11] *Id*. at 183-184.

[12] *Id*. at 185.

[13] *Id*. at 129-136.

each other, have manipulated things and circumstances in a manner deliberately intended to deprive and deny her the x x x project even if she was the lowest and complying bidder thereof;"[14] that individual petitioners' "clear intention has been indisputably to implement the project 'by contract' if the bidding is won by any other bidder, and to implement it 'by administration'"[15] if respondent won; that the real reason behind individual petitioners' refusal to award the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section project to her is to deny and deprive her, "harass and teach her a lesson not to file cases against the defendants even when there are valid and lawful reasons to do so;"[16] that it was more expedient to implement the project by bid contract than by administration; that individual petitioners are guilty of malice and bad faith and intentionally delayed the processes relative to the bidding for the said project in order to defeat her valid claim thereto; and as a result, she was deprived of the said project and the reasonable profits she would have gained therefrom. Thus, she prayed, as follows:

WHEREFORE, it is most respectfully prayed that judgment be rendered for the plaintiff and against the defendants, ordering the defendants, jointly and solidarily, to pay the plaintiff the sums of ₱855,000.00 as actual damages; at least ₱200,000.00 as moral damages; ₱200,000.00 as attorney's fees plus ₱3,000.00 per hearing as appearance fee; ₱50,000.00 as miscellaneous litigation and other expenses; such amount of exemplary damages this Honorable Court may fix as just and proper; and to pay the costs.

Other reliefs just and proper are also prayed for.[17]

In their Answer,[18] herein individual petitioners prayed for the dismissal of the case, arguing that respondent has no valid cause of action; that the decision to undertake the subject project

---

[14] *Id*. at 131.

[15] *Id*. at 132.

[16] *Id*. at 133.

[17] *Id*. at 135.

[18] *Id*. at 87-113.

by administration was legal and justified, and was not arrived at in bad faith and with malice; that respondent had no right to the project since under the Implementing Rules and Regulations (IRR) of Presidential Decree No. 1594,[19] a contractor is not automatically entitled to an award of a project subject to bidding by the mere fact that he is the lowest bidder as he must still undergo a mandatory post-qualification procedure regarding his legal, technical and financial capability and other qualifications as outlined under said IB 10.5 of the IRR;[20] that under the published Invitation to Bid[21] for the subject project, it is particularly stated that government reserved the right to reject any or all bids, waive any minor defect therein, and accept the offer most advantageous to it; that respondent had a mere inchoate right but which does not give her a valid cause of action; that respondent was awarded the other project she bid for, which indicates lack of bad faith and malice on their part; and that the case is clearly an unauthorized suit against the State, as no prior consent to be sued was shown in the complaint.

The parties were directed to file their respective position papers on the issue of whether the case was one against the State, or one against the individual petitioners in their respective personal capacities.

On March 23, 2004, the RTC issued an Order dismissing Civil Case No. 27059 on the conclusion that it was an unauthorized suit against the State. It held, as follows:

> The instant case is a suit against the state and therefore dismissible for it cannot be sued without its consent.
>
> The plaintiff, being the lowest bidder of the San Miguel-Mandurriao Road (Barangay Hibao-an) Project, has no automatic right to be awarded of [sic] the said project since the plaintiff has still to undergo

---

[19] PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS.

[20] IB 10.5 – Postqualification of Contractor with the Lowest Calculated Bid.

[21] *Rollo*, pp. 114-116.

post-qualification regarding his legal, technical and financial capability as mandated by law and the government reserves the right to reject any or all bids, waive any minor defect therein, and accept the offer most advantageous to it. The rejection of the government to award the project to the herein plaintiff is well within its prerogative to best serve the interest of the citizenry. It is worth stressing that when the project was taken 'by administration', it passed thru proper procedures. Due to public clamor of the unpassable [sic] status of the said San Miguel-Mandurriao Road, the drivers of public utility vehicles plying the said route, the Mandurriao Transport Integrated Association, Inc. (MITAD), and the residents of the said community were howling protest and indignant words against the office of DPWH. This prompted x x x Tingson x x x to recommend that the said project be undertaken by administration which was favorably endorsed by x x x Agustino to x x x Datumanong. Thus, on August 23-24, 2001, x x x Bonoan inspected the said road and submitted a memorandum to x x x Datumanong, confirming the unbearable and hazardous conditions of the said road and recommended that the project be undertaken 'by administration.' x x x Datumanong issued a memorandum to x x x Agustino dated November 12, 2001, directing the implementation of the concreting of Mandurriao-San Miguel Road (Barangay Hibao-an Section) 'by administration'. Hence, x x x Lagoc, x x x Jerecia and x x x Gardose, in their capacities as BAC Chairman and members, respectively, did not conduct the post evaluation/ qualification of plaintiff's firm for the said project. The foregoing acts of the above-named defendants were all committed in the performance of their official functions and cannot be said to have been tainted with malice and bad faith as it [sic] passed thru proper procedures as mandated by law.

WHEREFORE, the defendants' affirmative defenses is [sic] granted and this case is hereby DISMISSED.

SO ORDERED.[22]

Respondent moved to reconsider, but the RTC held its ground.

Ruling of the Court of Appeals

Respondent interposed an appeal before the CA, docketed as CA-G.R. CV No. 00889, arguing that when the DPWH entered

[22] *Id*. at 85-86.

into contract with her, it descended to the level of an ordinary person and impliedly gave its consent to sue and be sued; that her complaint did not seek relief from the State, but against individual petitioners in their respective personal capacities on the ground that they acted in bad faith and with malice in dealing with her.

On March 26, 2012, the CA rendered the assailed Decision, declaring as follows:

> We perceive merit in plaintiff-appellant's postulations.
>
> An unincorporated government agency such as the DPWH is without any separate juridical personality of its own and hence enjoys immunity from suit. Even in the exercise of proprietary functions incidental to its primarily governmental functions, an unincorporated agency still cannot be sued without its consent.
>
> 'While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded.'
>
> It bears emphasis that when the suit is against an officer of the State, enquiry must be made whether in fact ultimate liability will fall on the officer or on the government. If it is the government which will ultimately be accountable, the suit must be considered as one against the state itself.
>
> In the case at bench, plaintiff-appellant reasoned that no relief was claimed against the government. The Complaint showed that the Republic was not impleaded and only the public officers were made parties thereto. The gist of the initiatory pleading was to ascertain and adjudicate defendants-appellees' joint and several liability for damages. There was no express mention whatsoever of State liability. What was explicit was plaintiff-appellant's allegation of bad faith on the part of the public officers who denied her the award of the project which resultantly deprived her of prospective profits.

On this score, it cannot be concluded that the Complaint was barred by immunity of the State from suit inasmuch as no appropriation or liability was sought from the government coffer. On the contrary, liability was directly limited to the public officers as an incident of their alleged wanton and malicious acts.

'The doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction.'

Of primordial significance was the fact that no contract was inked between DPWH and plaintiff-appellant with respect to the disputed project. In fact, the instant suit was intended to compel the public officers to compensate plaintiff-appellant for the prospective profits she would have earned had she been awarded the project as the bidder who submitted the lowest numerical bid.

It was defendants-appellees' contention that the submission of the lowest bid alone does not give the plaintiff-appellant the right to insist that the contract be awarded to her. Citing IB 10.5 of the Implementing Rules and Regulations of Presidential Decree No. (P.D.) No. 1594, x x x, defendants-appellees posited that the bid was still subject to post evaluation and acceptance of the Government which reserved in the Invitation to Bid (ITB) the right to reject any and all bids that are not deemed responsive or compliant to its requirements.

Indeed, the executive department is acknowledged to have wide latitude to accept or reject a bid, or even after an award has been made, to revoke such award. From these options, the court will not generally interfere with the exercise of discretion by the executive department, unless it is apparent that the exercise of discretion is used to shield unfairness or injustice.

The Court, the parties, and the public at large are bound to respect the fact that official acts of the Government, including those performed by governmental agencies such as the DPWH, are clothed with the presumption of regularity in the performance of official duty and cannot be summarily, prematurely and capriciously set aside.

However, the presumption that official duty has been regularly performed is among the disputable presumptions. 'It is settled that a disputable presumption is a species of evidence that may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence. One such disputable/rebuttable presumption is that an official act or duty has been regularly performed…' Such, presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.

True, the Government's reservation subjected the bidders to its right to reject, and consequently accept any and all bids at its discretion. Unless such discretion has been arbitrarily exercised causing patent injustice, the Court will not supplant its decision to that of the agency or instrumentality which is presumed to possess the technical expertise on the matters within its authority.

Yet, it is worthy of consideration that 'Our legal framework allows the pursuit of remedies against errors of the State or its components available to those entitled by reason of damage or injury sustained. Such litigation involves demonstration of legal capacity to sue or be sued, an exhaustive trial on the merits, and adjudication that has basis in duly proven facts and law.'

In this case, in order to properly determine the supposed existence of capricious exercise of governmental discretion, in the guise of performance of official duty, this Court deemed it best that the matter of damages be fairly litigated before the trial court. In the process, the plaintiff-appellant can refute, by way of competent evidence, the presumptive regularity in the performance by defendants-appellees of official functions.

WHEREFORE, the appeal is GRANTED. Hence, the Order of March 23, 2004 rendered by the Regional Trial Court, Branch 29, Iloilo City in Civil [Case] No. 27059 is hereby SET ASIDE. Let this case be remanded to the trial court for proper disposition on its merits.

SO ORDERED.[23] (Citations omitted)

Petitioners sought to reconsider, but were rebuffed. Hence, the present Petition.

---

[23] *Id*. at 66-69.

Issues

In a June 22, 2015 Resolution,[24] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE COURT OF APPEALS ERRED IN SETTING ASIDE THE ORDER OF DISMISSAL BY THE LOWER COURT BECAUSE THE COMPLAINT WAS A SUIT AGAINST THE STATE TO WHICH IT HAS NOT GIVEN ITS CONSENT TO BE SUED.

II.

THE COURT OF APPEALS ERRED IN GRANTING THE RESPONDENT'S APPEAL AND REMANDING THE CASE TO THE LOWER COURT FOR TRIAL BECAUSE RESPONDENT FAILED TO ALLEGE ANY ACTIONABLE WRONG THAT WOULD ENTITLE HER TO THE DAMAGES CLAIMED.

III.

THE COURT OF APPEALS ERRED IN REQUIRING THAT THE MATTER OF DAMAGES BE LITIGATED BEFORE THE LOWER COURT BECAUSE THE PRESUMPTION OF GOOD FAITH AND REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY, WHILE ADMITTEDLY DISPUTABLE, NEED NOT ALWAYS BE THRESHED OUT IN A FULL-BLOWN TRIAL ESPECIALLY WHERE THE FACTS ARE UNDISPUTED.[25]

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside and that, instead, Civil Case No. 27059 be dismissed as ordered by the RTC, petitioners argue in their Petition and Reply[26] that respondent's case for damages is actually an unauthorized suit against the State, as the individual petitioners are being sued in relation to acts committed in the performance of their official

---

[24] *Id*. at 297-298.

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

[26] *Id*. at 288-295.

duties; that as such, individual petitioners should be protected by the mantle of state immunity and allowed to perform their functions without fear of unwarranted lawsuits in order to better serve the public; that respondent should not be allowed to circumvent the principle of state immunity by the expedient of impleading the individual petitioners in their private capacities; that the individual petitioners were indubitably acting within the bounds of their official mandate when they implemented the subject project by administration instead of awarding the same to respondent; that the decision to undertake the project by administration was not made capriciously but with utmost consideration and legal justification; that there is no actionable wrong committed against respondent; that she is not entitled to relief as her bid was not subjected to the required post-qualification process; that her claim of being singled out with malice and bad faith is belied by the fact that she was awarded one of the projects by the petitioners; and that the presumption of regularity in the performance of official duty should prevail in this case, as against respondent's claims and arguments to the contrary.

Respondent's Arguments

Respondent, on the other hand, counters in her Comment[27] that as the individual petitioners conspired in bad faith to deprive her of the subject project and unduly utilized their official functions to achieve such end, they opened themselves to a damage suit in their respective individual capacities; that by their actions, individual petitioners waived the cloak or protection afforded by their office; and that, as correctly held by the CA, the issue of existence of an actionable wrong resulting from the individual petitioners' acts is for the RTC to determine after trial on the merits, and cannot be passed upon summarily in the proceedings before the CA or this Court.

Our Ruling

The Court grants the Petition.

---

[27] *Id*. at 283-285.

The procurement process basically involves the following steps: (1) pre-procurement conference; (2) advertisement of the invitation to bid; (3) pre-bid conference; (4) eligibility check of prospective bidders; (5) submission and receipt of bids; (6) modification and withdrawal of bids; (7) bid opening and examination; (8) bid evaluation; **(9) post qualification**; **(10) award of contract and notice to proceed**. x x x[28]

Thus, before a government project is awarded to the lowest calculated bidder, his bid must undergo a mandatory post-qualification procedure whereby the "procuring entity verifies, validates, and ascertains all statements made and documents submitted by the bidder with the lowest calculated or highest rated bid using a non[-]discretionary criteria as stated in the bidding documents."[29]

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement process to the implementation of awarded contracts. It is particularly relevant in this case to distinguish between the steps in the procurement process, such as the declaration of eligibility of prospective bidders, the preliminary examination of bids, the bid evaluation, and the **post-qualification stage, which the Bids and Awards Committee (BAC) of all government procuring entities should follow**.

x x x x x x x x x

After the preliminary examination stage, the BAC opens, examines, evaluates and ranks all bids and prepares the Abstract of Bids which contains, among others, the names of the bidders and their corresponding calculated bid prices arranged from lowest to highest.

---

[28] *Abaya v. Ebdane, Jr.*, 544 Phil. 645, 684 (2007).

[29] *Querubin v. Commission on Elections En Banc*, G.R. No. 218787, December 8, 2015, 776 SCRA 715, 769, citing Sec. 34.3 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 (RA 9184), the Government Procurement Reform Act, which took effect on January 26, 2003 and repealed PD 1594. While the post-qualification procedure under the new law, RA 9184, may have been amended, both laws nonetheless require the conduct of such a procedure before the project may be awarded to a successful bidder.

The objective of the bid evaluation is to identify the bid with the lowest calculated price or the Lowest Calculated Bid. **The Lowest Calculated Bid shall then be subject to post-qualification to determine its responsiveness to the eligibility and bid requirements. If, after post-qualification, the Lowest Calculated Bid is determined to be post-qualified, it shall be considered the Lowest Calculated Responsive Bid and the contract shall be awarded to the bidder**.[30] (Emphasis supplied)

In one case, bidders in a government project sought to enjoin the award and implementation thereof, arguing that as the bidders who submitted the lowest numerical bid, they were entitled to the award. This Court disagreed, for the reason, among others, that mere submission of the lowest bid did not automatically entitle them to an award; their bid must still undergo post-qualification/ evaluation. Thus, the Court held in said case that –

In the case at bar, the petitioners pray for the issuance of a writ of preliminary mandatory injunction to direct public respondent BAC Region VII to award the contract to the Flyover Project to the petitioners. The petitioners claim that they are entitled to the award as the lowest bidder for the construction of the said infrastructure project of the Government. In support of their claim, the petitioners allege fraud and bad faith on the part of public respondent BAC Region VII. They allege conspiracy, forgery and fraud on the part of the public respondent in awarding the subject contract to private respondent WTG. These grave allegations were not sufficiently substantiated.

As correctly pointed out by the respondents, **the mere submission of the lowest bid does not automatically entitle the petitioners to the award of the contract. The bid must still undergo evaluation and post qualification in order to be declared the lowest responsive bid and thereafter be awarded the contract**. As provided in the Invitation to Apply for Eligibility and to Bid, 'the Government reserve[s] the right to reject any and all bids, waive any minor defect therein, and accept the offer most advantageous to the Government.' Such reservation subjects the bidders to the right of the Government to reject, and consequently accept, any and all bids at its discretion. Unless such discretion has been arbitrarily exercised causing patent

---

[30] *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 555-556, 559 (2009).

injustice, the Court will not supplant its decision to that of the agency or instrumentality which is presumed to possess the technical expertise on the matters within its authority.

In the case of the petitioners, while both the technical and financial envelopes were opened in accordance with the May 28, 2003 Decision of the DPWH Secretary, **a post evaluation and qualification of the said bids is still essential in order to determine whether the lowest bid is responsive to and in compliance with the requirements of the project, the laws, rules and regulations**. x x x[31] (Emphasis supplied; citations omitted)

From the foregoing, it must be concluded that since respondent's lowest calculated bid for the subject project did not undergo the required post-qualification process, then she cannot claim that the project was awarded to her. And if the project was never awarded to her, then she has no right to undertake the same. If she has no right to the project, then she cannot demand indemnity for lost profits or actual damages suffered in the event of failure to carry out the same. Without a formal award of the project in her favor, such a demand would be premature. Consequently, she has no right of action against petitioners, and no cause of action in Civil Case No. 27059. Indeed, "only when there is an invasion of primary rights, not before, does the adjective or remedial law become operative. Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground."[32]

It may be argued that respondent's claim for damages is likewise potentially premised on Article 27 of the Civil Code, which provides that –

Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

---

[31] *WT Construction, Inc. v. Department of Public Works and Highways*, 555 Phil. 642, 649-650 (2007).

[32] *Turner v. Lorenzo Shipping Corporation*, 650 Phil. 372, 390 (2010).

In this case, respondent may claim that individual petitioners' refusal or neglect to award the project to her is the cause of her injury. However, this Court still finds that respondent has no cause of action. Individual petitioners could not have awarded the project to her precisely for the reason that her bid still had to undergo a post-qualification procedure required under the law. However, such post-qualification was overtaken by events, particularly Datumanong's November 7, 2001 Memorandum.

In short, respondent's causes of action solely and primarily based on a supposed award, actual or potential, do not exist. This is so for the precise reason that such an award and the whole bidding process for that matter, no longer exist, as they were mooted and superseded by the DPWH's decision to undertake the subject project by administration, as well as by the reservation contained in the Invitation to Bid that at any time during the procurement process, government has the right to reject any or all bids.

The proper remedy for respondent should have been to seek reconsideration or the setting aside of Datumanong's November 7, 2001 Memorandum, and then a reinstatement of the bidding or post-qualification process with a view to securing an award of the contract and notice to proceed therewith. After all, said Memorandum enjoys the same presumption of regularity that is attached to all official acts of government.

With the foregoing disquisition, the Court finds no need to resolve the other issues and arguments raised by the parties.

WHEREFORE, the Petition is **GRANTED**. The March 26, 2012 Decision and November 9, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 00889 are **REVERSED and SET ASIDE**. Civil Case No. 27059 before the Regional Trial Court of Iloilo City, Branch 29 is ordered **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 208243. June 5, 2017]

EDWIN GRANADA REYES, *petitioner*, *vs.* **THE OFFICE OF THE OMBUDSMAN, THE SANDIGANBAYAN, and PAUL JOCSON ARCHES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF; DISAGREEMENT WITH THE OMBUDSMAN FINDINGS IS NOT ENOUGH TO CONSTITUTE GRAVE ABUSE OF DISCRETION; IT MUST BE SHOWN THAT THE OMBUDSMAN CONDUCTED THE PRELIMINARY INVESTIGATION IN SUCH A WAY THAT AMOUNTED TO A VIRTUAL REFUSAL TO PERFORM A DUTY UNDER THE LAW.—** [F]or this Petition to prosper, petitioner would have to show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law. Petitioner has failed to do this. "A preliminary investigation is only for the determination of probable cause." x x x Here, the Ombudsman properly performed its duty to determine probable cause as to whether petitioner and his co-respondents *a quo* violated Section 3(e) of Republic Act No. 3019. x x x Based on opinion, reasonable belief, and the evidence on record, the Ombudsman found that the elements of the crime punishable under Section 3(e) of Republic Act No. 3019 existed. x x x Petitioner may insist on his innocence and the absence of bad faith, but the presence or absence of bad faith is a matter of evidence, best threshed out during trial. In any case, petitioner has failed to show how the Ombudsman's determinations constituted grave abuse of discretion.

2. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NOT SUBJECT TO THE SAME DUE PROCESS REQUIREMENTS THAT MUST BE PRESENT DURING TRIAL; RESPONDENT HAS THE RIGHT TO EXAMINE THE EVIDENCE SUBMITTED BY THE COMPLAINANT**

BUT DOES NOT HAVE THE SAME RIGHT OVER THE EVIDENCE SUBMITTED BY CO-RESPONDENT.— Preliminary investigation is not part of trial and is conducted only to establish whether probable cause exists. Consequently, it is not subject to the same due process requirements that must be present during trial. x x x A person's rights during preliminary investigation are limited to those provided by x x x Rule 112, Section 3 of the Rules of Court[.] x x x [A] respondent under preliminary investigation has the right to examine the evidence submitted by the complainant, but he does not have a similar right over the evidence submitted by his or her co-respondents. This issue is not novel. This Court has held that during preliminary investigation, the Ombudsman is not required to furnish a respondent with the counter-affidavits of his co-respondents. x x x Thus, petitioner's non-receipt of Andres' affidavit did not violate his procedural rights during preliminary investigation.

APPEARANCES OF COUNSEL

Law Firm of Torreon & Partners for petitioners.
Razo & Sator Law Office for private respondent.
Office of the Solicitor General for public respondent.

D E C I S I O N

LEONEN, *J*.:

This resolves a Petition for Certiorari[1] under Rule 65 of the Rules of Court, filed by petitioner Edwin Granada Reyes (Reyes), together with Rita Potestas Domingo (Domingo) and Solomon Anore de Castilla (de Castilla).[2] This Petition assails the Office of the Ombudsman's March 20, 2013 Resolution[3] in Case No.

---

[1] *Rollo,* pp. 3-28.

[2] Pursuant to Rita Potestas Domingo and Solomon Anore de Castilla's motion to withdraw from being parties to the Petition (*rollo,* pp. 226–231), this Court dropped them as petitioners in a Resolution dated September 16, 2013 (*rollo*, p. 249-A).

[3] *Rollo,* pp. 29-40. The Resolution was penned by Assistant Special

OMB-M-C-11-0005-A and the June 26, 2013 Memorandum[4] denying their motion for reconsideration. The assailed March 20, 2013 Resolution found probable cause to indict petitioner Reyes, Domingo, de Castilla, and Gil C. Andres (Andres) for violation of Section 3(e) of Republic Act No. 3019 and directed that an information against them be filed before the Sandiganbayan.[5]

On November 21, 2005, the Sangguniang Bayan of Bansalan, Davao del Sur passed Municipal Ordinance No. 357, prohibiting the "storing, displaying, selling, and blowing up ('pagpabuto') of those pyrotechnics products allowed by law, commonly called 'firecrackers' or 'pabuto' within the premises of buildings 1 and 2 of the Bansalan Public Market."[6] On December 14, 2009, then Bansalan Mayor Reyes approved a permit allowing vendors to sell firecrackers at the Bansalan Public Market from December 21, 2009 to January 1, 2010.[7]

On December 27, 2009, a fire befell the Bansalan Public Market. It caused extensive damage and destroyed fire hydrants of the Bansalan Water District. Subsequently, private respondent Paul Jocson Arches (Arches) filed a complaint dated December 20, 2010 against Reyes before the Office of the Ombudsman, Mindanao (Ombudsman-Mindanao). Arches questioned the approval and issuance of a mayor's permit agreeing to sell firecrackers, in violation of Municipal Ordinance No. 357. He claimed that this permit caused the fire the previous year.[8]

Prosecutor III Anna Isabel G. Aurellano and approved by the Ombudsman Conchita Carpio Morales.

[4] *Id*. at 120-130. The Memorandum: Resolution on the Motion for Reconsideration, docketed as Criminal Case No. SB-13-CRM-0596, was penned by Assistant Special Prosecutor II Joseph F. Capistrano, with recommending approval of Acting Director Lalaine D. Benitez and approved by The Ombudsman Conchita Carpio Morales.

[5] *Id*. at 39.

[6] *Id*. at 262-263, Comment to the Petition for *Certiorari*.

[7] *Id*. at 262.

[8] *Id*. at 29-30.

By order of the Ombudsman-Mindanao, Chief of Police de Castilla, Fire Marshall Andres,[9] and Permits and Licensing Officer Designate Domingo were made respondents in the case, considering that they recommended the approval of the mayor's permit.[10]

The respondents *a quo* filed their respective counter-affidavits. Reyes alleged that Andres filed two (2) different counter-affidavits, and Reyes was not furnished a copy of the second counter-affidavit (Andres' affidavit).[11]

After concluding the preliminary investigation, the Ombudsman issued the assailed Resolution[12] dated March 20, 2013 and found that probable cause existed to charge Reyes and his co-respondents *a quo* with violation of Section 3(e) of Republic Act No. 3019. The Ombudsman held that Reyes and his co-respondents *a quo* were public officers during the questioned acts.[13] Both the government and private stall owners suffered undue injury due to the fire at the Bansalan Public Market.[14] While the mayor's permit was not the proximate cause of the fire, it nonetheless, "gave unwarranted benefit and advantage to the fire cracker vendors . . . [to sell] firecrackers in the public market despite existing prohibition."[15] The issuance of the mayor's permit was "patently tainted with bad faith and partiality or, at the very least, gross inexcusable negligence."[16] The Ombudsman appreciated the evidence presented and found that Reyes and his co-respondents *a quo* were aware of Municipal Ordinance No. 357.[17] Despite this, Reyes approved and issued

---

[9] *Id*. at 5.

[10] *Id*. at 29-30.

[11] *Id*. at 21.

[12] *Id.* at 29-40.

[13] *Id*. at 34.

[14] *Id*.

[15] *Id.* at 35.

[16] *Id*. at 36.

[17] *Id.*

a mayor's permit stating, "Permit is hereby granted to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur."[18] The assailed Resolution read:

> WHEREFORE, this Office finds probable cause to indict respondents Edwin G. Reyes, Solomon A. De Castilla, Gil C. Andres, and Rita P. Domingo for violation of Section 3 (e) of Republic Act No. 3019, as amended (Anti-Graft and Corrupt Practices Act). Let an Information for violation of Section 3 (e) of Republic Act No. 3019 be filed against the respondents before the Sandiganbayan.
>
> The other charges against the respondents are dismissed.[19]

Thus, an Information[20] was filed against Reyes, together with his co-respondents *a quo* Domingo, de Castilla, and Andres for violating Section 3(e) of Republic Act No. 3019. It read:

> On December 14, 2009, or sometime prior or subsequent thereto, in the Municipality of Bansalan, Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, EDWIN GRANADA REYES, RITA POTESTAS DOMINGO, SOLOMON ANORE DE CASTILLA, GIL CURAMENG ANDRES, public officers being then the Mayor, Permits and Licensing Officer Designate, Chief of Police, and Fire Marshall, respectively, of the Municipality of Bansalan, while in the discharge of their official functions, conspiring and confederating with one another, with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefit to a group of firecracker vendors by approving and issuing them a mayor's permit "to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur" despite fully knowing the existence of a municipal ordinance expressly prohibiting the storing, displaying, selling and blowing-up of firecrackers at the Bansalan Public Market and the non-issuance of the requisite Fire Safety Inspection Certificate (FSIC) to the firecracker vendors, thereby giving the said firecracker vendors the

---

[18] *Id.*

[19] *Id.* at 39.

[20] *Id.* at 66-68.

unwarranted benefit and advantage of holding the business of selling firecrackers at the Bansalan Public Market.

CONTRARY TO LAW.[21]

The Ombudsman denied a motion for reconsideration of its March 20, 2013 Resolution.[22]

Thus, petitioner filed this petition, arguing that public respondent Ombudsman gravely abused its discretion considering there was no legal basis to support the finding of probable cause against petitioner.[23]

Petitioner argues that there was no probable cause, insisting that there was not enough basis for the finding of bad faith, manifest partiality, or gross inexcusable negligence in this case.[24] There was no unwarranted advantage or preference given to the firecracker vendors because the mayor's permit was granted based on a long-standing practice to allow them to sell their wares during the Christmas season.[25] All firecracker vendors received similar treatment and were allowed to sell their wares, provided they submitted the requirements.[26] Acts done in a public official's performance of official duty are presumed to have been done in good faith, and mistakes committed are not actionable unless malice or gross negligence amounting to bad faith is shown.[27]

Petitioner insists that public respondent Ombudsman committed grave abuse of discretion when it relied solely on Andres' affidavit, which was not furnished to petitioner, to indict him.[28] Petitioner did not know of Andres' affidavit, which

---

[21] *Id*. at 66-67.

[22] *Id*. at 130.

[23] *Id*. at 11.

[24] *Id*. at 13.

[25] *Id*. at 19.

[26] *Id*.

[27] *Id*. at 20.

[28] *Id*.

contained accusations against petitioner, until he received the assailed Resolution.[29] Thus, petitioner's right to due process was violated. Petitioner imputes bad faith in the filing of the complaint against him.[30]

In support of his prayer for injunctive relief, petitioner claims that he and his family will suffer financial, emotional, and psychological hardship. The issuance of injunctive relief is necessary because the Sandiganbayan has already set the arraignment date of petitioner.[31]

In his Comment,[32] private respondent Arches argues that there was probable cause,[33] that none of the grounds for enjoining a criminal prosecution exists,[34] and that the assailed Resolution was not based solely on Andres' affidavit.[35]

The Office of the Ombudsman argues in its Comment[36] that petitioner failed to show any grave abuse of discretion on the part of the Ombudsman. There were sufficient bases to indict petitioner for violation of Section 3(e) of Republic Act No. 3019. The findings of the Ombudsman were based on the evidence presented.[37] In the absence of grave abuse of discretion, this Court has consistently refrained from interfering with the Ombudsman's exercise of its mandate.[38] The Ombudsman opposes petitioner's prayer for injunctive relief, as no invasion of any clear or legal right has been established by the petitioner.[39]

---

[29] *Id*. at 22.

[30] *Id*. at 23.

[31] *Id*. at 24.

[32] *Id*. at 262-273, Comment to the Petition for *Certiorari*.

[33] *Id.* at 264.

[34] *Id*.

[35] *Id*. at 265.

[36] *Id*. at 477-495.

[37] *Id*. at 484.

[38] *Id*. at 487.

[39] *Id*. at 490.

In his Reply,[40] petitioner Reyes argues that conspiracy could not be present, considering that the respondents did not even agree with one another, as shown by Andres' affidavit.[41] Further, it was not shown that petitioner intentionally disregarded the Fire Safety Inspection Certificate requirement as mandated by law. Without this, only administrative liability would attach. The Ombudsman also did not show that the vendors enjoyed any undue benefit or that the government suffered any undue disadvantage.[42] Lastly, there was no showing of manifest partiality, evident bad faith, or gross inexcusable neglect without which petitioner cannot be held criminally liable.[43]

Petitioner avers that during the preliminary investigation, he was not clearly informed of the nature of the charge against him, in violation of his constitutional right to due process.[44] The findings of the Ombudsman were confusing,[45] and petitioner was not provided a copy of co-respondent *a quo* Andres' affidavit, upon which the Ombudsman relied in its finding of probable cause against petitioner.[46]

Petitioner insists that this Court can interfere with the findings of the investigatory powers of the Ombudsman in this case, considering that "this is a case of persecution, [not] prosecution."[47] Private respondent Arches was compelled by vengeance in filing the complaint.[48]

---

[40] *Id*. at 499-527, Reply to the Comment to the Petition for *Certiorari*, Prohibition with Prayer for Injunction and Temporary Restraining Order.

[41] *Id*. at 508.

[42] *Id*. at 509.

[43] *Id*.

[44] *Id*. at 512.

[45] *Id*. at 512-513.

[46] *Id*. at 514.

[47] *Id*. at 520.

[48] *Id*.

The sole issue for resolution of this Court is whether the Ombudsman committed grave abuse of discretion in determining that probable cause against petitioner exists.

We dismiss the Petition.

I

This Court generally does not interfere with the Ombudsman's findings of probable cause. In *Dichaves v. Office of the Ombudsman*:[49]

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"
>
> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.
>
> The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor*, that the person charged was guilty of the crime for which he [or she] was prosecuted."
>
> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

---

[49] G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> [Per *J.* Leonen, Second Division].

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[50] (Emphasis in the original, citations omitted)

Despite this well-established principle, petitioner would have this Court interfere with the Ombudsman's assessment on the basis of grave abuse of discretion. However, disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion. It is settled:

> An act of a court or tribunal may constitute ***grave abuse of discretion*** when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.[51] (Emphasis in the original, citations omitted)

Thus, for this Petition to prosper, petitioner would have to show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law. Petitioner has failed to do this. "A preliminary investigation is only for the determination of probable cause."[52] Further, probable cause is:

---

[50] *Id.* at 16-17.

[51] *Angeles v. Secretary of Justice*, 503 Phil. 93, 100 (2005) [Per *J.* Carpio, First Division].

[52] *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 863 (2015) [Per *J.* Carpio, *En Banc*].

[T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[53] (Citations omitted)

Here, the Ombudsman properly performed its duty to determine probable cause as to whether petitioner and his co-respondents *a quo* violated Section 3(e) of Republic Act No. 3019. Section 3(e) provides:

Section 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . .

(*e*) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Based on opinion, reasonable belief, and the evidence on record, the Ombudsman found that the elements of the crime punishable under Section 3(e) of Republic Act No. 3019 existed.[54] Petitioner and his co-respondents *a quo* did not deny that they were public officers when the alleged acts were committed.[55]

---

[53] *Chan y Lim v. Secretary of Justice,* 572 Phil. 118, 132 (2008) [Per *J.* Nachura, Third Division].

[54] *Rollo,* pp. 34-37.

[55] *Id.*

There was "unwarranted benefit and advantage [given] to the firecracker vendors."[56] The issuance of the mayor's permit was "tainted with bad faith" or gross inexcusable negligence.[57]

Petitioner claims that the Ombudsman failed to show the undue benefit given to the vendors,[58] but the Resolution sufficiently explained:

> Nevertheless, respondents' approval and issuance of the subject mayor's permit gave unwarranted benefit and advantage to the [firecracker] vendors. "Unwarranted" means lacking adequate or official support; unjustified, unauthorized; or without justification or adequate reasons; while "advantage" is defined as "a more favorable or improved position or condition; benefit or gain of any kind." The approval and issuance of the mayor's permit was clearly without basis as it was, in fact, in violation of a municipal ordinance and the Fire Code of the Philippines. It gave a group of vendors the benefit and advantage of holding the business of selling firecrackers in the public market despite existing prohibition.[59] (Citations omitted)

Petitioner's claim that the Ombudsman did not explain the evident bad faith or gross inexcusable neglect[60] also cannot be countenanced. The Ombudsman likewise sufficiently explained the finding of bad faith:

> . . . Respondents' action was patently tainted with bad faith and partiality or, at the very least, gross inexcusable negligence. "Bad faith" refers to a conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; "partiality" is synonymous with "bias" which excites a disposition to see and report matters as they are wished for rather than as they are; while "gross negligence" is negligence characterized by the want of even slight care with a conscious indifference to consequences as far as other persons are concerned.

---

[56] *Id*. at 35.

[57] *Id*. at 36.

[58] *Id.* at 509.

[59] *Id*. at 35.

[60] *Id.* at 510.

Based on their respective counter-affidavits, respondents were well aware of Municipal Ordinance No. 357 which expressly prohibits "the storing, displaying, selling and blowing up ("pagbubuto") of those pyrotechnics products allowed by law, commonly called as "firecrackers" or "pabuto" within the premises of buildings 1 and 2 of Bansalan Public Market." In clear violation of this ordinance, respondents approved and issued a mayor's permit stating[,] "Permit is hereby granted to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur." Furthermore, as respondent Andres narrated in his counter-affidavit, the firecracker vendors were not issued a Fire Safety Inspection Certificate (FSIC) because they did not comply with fire safety requirements. The issuance of a FSIC by the Bureau of Fire [Protection] is a prerequisite to the grant of permits by local governments. According to Andres, he expressly informed respondent Reyes of the lack of the safety requirements and objected to the issuance of the mayor's permit because of the fire risk involved in such sale of firecrackers. Nevertheless, despite the absence of the required FSIC, respondents Domingo, Castilla, and Andres himself recommended for approval the application for the subject mayor's permit. Respondent mayor, for his part, cannot claim that he merely relied on the other respondents' recommendation for approval since he knew of an existing ordinance prohibiting such sale of firecrackers and was apprised of the fact that the firecracker vendors were not given a FSIC.[61] (Citations omitted)

Petitioner may insist on his innocence and the absence of bad faith, but the presence or absence of bad faith is a matter of evidence, best threshed out during trial. In any case, petitioner has failed to show how the Ombudsman's determinations constituted grave abuse of discretion.

II

Petitioner avers that his right to due process was violated. Petitioner points out that the initial complaint against him and his co-respondents *a quo* did not mention giving unwarranted benefit to the firecracker vendors. Yet, he was charged with violating Section 3(e) of Republic Act No. 3019 for giving unwarranted benefit to the firecracker vendors. Petitioner states

---

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

that this charge was based on co-respondent *a quo* Andres' affidavit, which he was not given. Because he had no opportunity to respond to Andres' affidavit, he asserts that he was deprived of due process.[62] This argument is untenable.

Preliminary investigation is not part of trial and is conducted only to establish whether probable cause exists. Consequently, it is not subject to the same due process requirements that must be present during trial. In *Webb v. De Leon*:[63]

> Considering the low quantum and quality of evidence needed to support a finding of probable cause, we also hold that the DOJ Panel did not gravely abuse its discretion in refusing to call the NBI witnesses for clarificatory questions. The decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator and the investigator alone. If the evidence on hand already yields a probable cause, the investigator need not hold a clarificatory hearing. To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. In the case at bar, the DOJ Panel correctly adjudged that enough evidence had been adduced to establish probable cause and clarificatory hearing was unnecessary.[64]

A person's rights during preliminary investigation are limited to those provided by procedural law.[65] Rule 112, Section 3 of the Rules of Court provides:

> Section 3. *Procedure*. – The preliminary investigation shall be conducted in the following manner:
>
> . . . .

---

[62] *Id*. at 22.

[63] 317 Phil. 758 (1995) [Per *J.* Puno, Second Division].

[64] *Id*. at 789.

[65] *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> 18 [Per *J.* Leonen, Second Division].

(b) . . . .

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

. . . .

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

Under procedural law, a respondent under preliminary investigation has the right to examine the evidence submitted by the complainant,[66] but he does not have a similar right over the evidence submitted by his or her co-respondents.

This issue is not novel. This Court has held that during preliminary investigation, the Ombudsman is not required to furnish a respondent with the counter-affidavits of his co-respondents. In *Estrada v. Office of the Ombudsman:*[67]

First. There is no law or rule which requires the Ombudsman to furnish a respondent with copies of the counter-affidavits of his co-respondents.

. . . .

Sen. Estrada claims that the denial of his Request for the counter-affidavits of his co-respondents violates his constitutional right to due process. **Sen. Estrada, however, fails to specify a law or rule which states that it is a compulsory requirement of due process in a preliminary investigation that the Ombudsman furnish a**

---

[66] Rules of Court, Rule 112, Sec. 3.

[67] 751 Phil. 821 (2015) [Per *J.* Carpio, *En Banc*].

respondent with the counter-affidavits of his co-respondents. Neither Section 3 (b), Rule 112 of the Revised Rules of Criminal Procedure nor Section 4 (c), Rule II of the Rules of Procedure of the Office of the Ombudsman supports Sen. Estrada's claim.

What the Rules of Procedure of the Office of the Ombudsman require is for the Ombudsman to furnish the respondent with a copy of the complaint and the supporting affidavits and documents **at the time the order to submit the counter-affidavit is issued to the respondent**. This is clear from Section 4 (b), Rule II of the Rules of Procedure of the Office of the Ombudsman when it states, "[a]fter such affidavits [of the complainant and his witnesses] have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits . . . ." At this point, there is still no counter-affidavit submitted by any respondent. **Clearly, what Section 4 (b) refers to are affidavits of the complainant and his witnesses, not the affidavits of the co-respondents**. Obviously, the counter-affidavits of the co-respondents are not part of the supporting affidavits of the complainant. No grave abuse of discretion can thus be attributed to the Ombudsman for the issuance of the 27 March 2014 Order which denied Sen. Estrada's Request.

Although Section 4 (c), Rule II of the Rules of Procedure of the Office of the Ombudsman provides that a respondent "**shall have access to the evidence on record**," this provision should be construed in relation to Section 4 (a) and (b) **of the same Rule**, as well as to the Rules of Criminal Procedure. *First,* Section 4 (a) states that "the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaint." The "supporting witnesses" are the witnesses of the complainant, and do not refer to the co-respondents.

Second, Section 4 (b) states that "the investigating officer shall issue an order attaching thereto a copy of the affidavits and all other supporting documents, directing the respondent" to submit his counter-affidavit. The affidavits referred to in Section 4 (b) are the affidavits mentioned in Section 4 (a). Clearly, the affidavits to be furnished to the respondent are the affidavits of the complainant and his supporting witnesses. The provision in the immediately succeeding Section 4 (c) of the same Rule II that a respondent shall have "access to the evidence on record" does not stand alone, but should be read

in relation to the provisions of Section 4 (a and b) of the same Rule II requiring the investigating officer to furnish the respondent with the "affidavits and other supporting documents" submitted by "the complainant or **supporting witnesses**." Thus, a respondent's "access to evidence on record" in Section 4 (c), Rule II of the Ombudsman's Rules of Procedure refers to the affidavits and supporting documents of "the complainant or **supporting witnesses"** in Section 4 (a) of the same Rule II.

Third, Section 3 (b), Rule 112 of the Revised Rules of Criminal Procedure provides that "[t]he respondent shall have **the right to examine the evidence submitted by the complainant** which he may not have been furnished and to copy them at his expense." A respondent's right to examine refers only to "**the evidence submitted by the complainant**."

Thus, whether under Rule 112 of the Revised Rules of Criminal Procedure or under Rule II of the Ombudsman's Rules of Procedure, there is no requirement whatsoever that the affidavits executed by the co-respondents should be furnished to a respondent.[68] (Emphasis in the original, citations omitted)

Thus, petitioner's non-receipt of Andres' affidavit did not violate his procedural rights during preliminary investigation.

Moreover, petitioner was fully accorded due process in the preliminary investigation proceedings.

In *Resurreccion v. People*:[69]

We have 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 for a reconsideration of the action or ruling complained of. For as long as the parties are given the opportunity to present their cause of defense, their interest in due course as in this case, it cannot be said that there was denial of due process.

Here, petitioner was able to file a counter-affidavit to explain his side and to respond to the complaint filed against him. He was not denied due process.

---

[68] *Id*. at 855-861.

[69] 738 Phil. 704, 720 (2014) [Per *J*. Brion, Second Division].

WHEREFORE, the Petition for Certiorari is **DISMISSED**. The Office of the Ombudsman's March 20, 2013 Resolution in Case No. OMB-M-C-11-0005-A and its June 26, 2013 Memorandum: Resolution on the Motion for Reconsideration[70] in relation to Criminal Case No. SB-13-CRM-0596 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* concur.

SECOND DIVISION

[G.R. No. 208450. June 5, 2017]

SPS. ROBERTO ABOITIZ and MARIA CRISTINA CABARRUS, *petitioners, vs.* **SPS. PETER L. PO and VICTORIA L. PO,** *respondents.*

[G.R. No. 208497. June 5, 2017]

SPS. PETER L. PO and VICTORIA L. PO, *petitioners, vs.* **SPS. ROBERTO ABOITIZ and MARIA CRISTINA CABARRUS, JOSE MARIA MORAZA, and ERNESTO ABOITIZ and ISABEL ABOITIZ,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; RECONVEYANCE; CONCEPT.—** A complaint for reconveyance is an action which admits the registration of title of another party but claims that

---

[70] *Rollo,* p. 120.

such registration was erroneous or wrongful. It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith. It seeks the transfer of a title issued in a valid proceeding. The relief prayed for may be granted on the basis of intrinsic fraud—fraud committed on the true owner instead of fraud committed on the procedure amounting to lack of jurisdiction.

2. **ID.; ID.; ID.; AN ACTION FOR RECONVEYANCE DISTINGUISHED FROM AN ACTION FOR ANNULMENT OF TITLE.—** [A] complaint for reconveyance is a remedy where the plaintiff argues for an order for the defendant to transfer its title issued in a proceeding not otherwise invalid. The relief prayed for may be granted on the basis of intrinsic rather than extrinsic fraud; that is, fraud committed on the real owner rather than fraud committed on the procedure amounting to lack of jurisdiction. An action for annulment of title, on the other hand, questions the validity of the grant of title on grounds which amount to lack of due process of law. The remedy is premised in the nullity of the procedure and thus the invalidity of the title that is issued. Title that is invalidated as a result of a successful action for annulment against the decision of a Regional Trial Court acting as a land registration court may still however be granted on the merits in another proceeding not infected by lack of jurisdiction or extrinsic fraud if its legal basis on the merits is properly alleged and proven.

3. **ID.; ID.; ID.; WHERE AN ACTION IS ONE FOR RECONVEYANCE AND ANNULMENT OF TITLE, THE REGIONAL TRIAL COURT HAS JURISDICTION TO HEAR THE CASE.—** Considering the Spouses Aboitiz's fraudulent registration without the Spouses Po's knowledge and the latter's assertion of their ownership of the land, their right to recover the property and to cancel the Spouses Aboitiz's title, the action is for reconveyance and annulment of title and not for annulment of judgment. Thus, the Regional Trial Court has jurisdiction to hear this case.

4. **ID.; ID.; ID.; AN ACTION FOR RECONVEYANCE AND ANNULMENT OF TITLE PRESCRIBES IN TEN (10) YEARS FROM DATE OF ISSUANCE OF THE TORRENS TITLE.—** An action for reconveyance and annulment of title

does not seek to question the contract which allowed the adverse party to obtain the title to the property. What is put on issue in an action for reconveyance and cancellation of title is the ownership of the property and its registration. It does not question any fraudulent contract. Should that be the case, the applicable provisions are Articles 1390 and 1391 of the Civil Code. Thus, an action for reconveyance and cancellation of title prescribes in 10 years from the time of the issuance of the Torrens title over the property.

5. **ID.; ID.; LACHES; CONCEPT AND ELEMENTS; ELEMENTS OF LACHES ARE LACKING IN CASE AT BAR.—** There is laches when a party was negligent or has failed "to assert a right within a reasonable time," thus giving rise to the presumption that he or she has abandoned it. Laches has set in when it is already inequitable or unfair to allow the party to assert the right. The elements of laches were enumerated in *Ignacio v. Basilio:* There is laches when: (1) the conduct of the defendant or one under whom he claims, gave rise to the situation complained of; (2) there was delay in asserting a right after knowledge of the defendant's conduct and after an opportunity to sue; (3) defendant had no knowledge or notice that the complainant would assert his right; (4) there is injury or prejudice to the defendant in the event relief is accorded to the complainant. x x x Based on these circumstances, the elements of laches are clearly lacking in this case. There was no delay in asserting their right over the property, and the Spouses Aboitiz had knowledge that the Spouses Po would assert their right. Thus, it cannot be said that they are barred by laches.

6. **ID.; ID.; ID.; LACHES DISTINGUISHED FROM PRESCRIPTION. —** "Laches is different from prescription." Prescription deals with delay itself and thus is an issue of how much time has passed. The time period when prescription is deemed to have set in is fixed by law. Laches, on the other hand, concerns itself with the effect of delay and not the period of time that has lapsed. It asks the question whether the delay has changed "the condition of the property or the relation of the parties" such that it is no longer equitable to insist on the original right. x x x The defense of laches is based on equity. It is not based on the title of the party invoking it, but on the right holder's "long inaction or inexcusable neglect" to assert his claim.

7. **REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; TWO (2) CONCEPTS.—** *Res judicata* embraces two (2) concepts: (i) bar by prior judgment and (ii) conclusiveness of judgment, respectively covered under Rule 39, Section 47 of the Rules of Court, paragraphs (b) and (c)[.] x x x *Res judicata* in the concept of bar by prior judgment proscribes the filing of another action based on "the same claim, demand, or cause of action." It applies when the following are present: (a) there is a final judgment or order; (b) it is a judgment or order on the merits; (c) it was "rendered by a court having jurisdiction over the subject matter and parties"; and (d) there is "identity of parties, of subject matter, and of causes of action" between the first and second actions. *Res judicata* in the concept of conclusiveness of judgment applies when there is an identity of issues in two (2) cases between the same parties involving different causes of action. Its effect is to bar "the relitigation of particular facts or issues" which have already been adjudicated in the other case.

8. **ID.; ID.; ID.; *RES JUDICATA* COULD NOT BE A DEFENSE IN AN ACTION FOR RECONVEYANCE BASED ON FRAUD WHERE THE COMPLAINANT HAD NO KNOWLEDGE OF THE APPLICATION FOR REGISTRATION; RATIONALE.—** [I]n *Racoma v. Fortich*, this Court held that *res judicata* could not be a defense in an action for reconveyance based on fraud where the complainant had no knowledge of the application for registration[.] x x x The rationale for allowing reconveyance despite the finality of the registration is that the issuance of a certificate of title does not create or vest ownership to a person over the property. Registration under the Torrens system "is not a mode of acquiring ownership." A certificate is only a proof of ownership. Thus, its issuance does not foreclose the possibility of having a different owner, and it cannot be used against the true owner as a shield for fraud.

9. **ID.; EVIDENCE; PRESUMPTION OF REGULARITY AND AUTHENTICITY OF A NOTARIZED DOCUMENT, NOT OVERTURNED.—** When a private document is notarized, the document is converted to a public document which is presumed regular, admissible in evidence without need for proof of its authenticity and due execution, and entitled to full faith and

credit upon its face. To overturn the presumption in favor of a notarized document, the party questioning it must present "clear, convincing, and more than merely preponderant evidence." x x x The Spouses Aboitiz failed to present clear and convincing evidence to overturn the presumption. The notarized Deed of Absolute Sale between Ciriaco and the Spouses Po is, thus, presumed regular and authentic.

10. **ID.; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTY, DEFINED; THE SELLERS OF THE PROPERTY SUBJECT OF AN ACTION FOR RECONVEYANCE ARE NOT INDISPENSABLE PARTIES, THEY ARE AT BEST NECESSARY PARTIES.—** An indispensable party is the party whose legal presence in the proceeding is so necessary that "the action cannot be finally determined" without him or her because his or her interests in the matter and in the relief "are so bound up with that of the other parties." The property owners against whom the action for reconveyance is filed are indispensable parties. No relief can be had, and the court cannot render a valid judgment, without them. The property has been sold to respondents Jose, Ernesto, and Isabel. Thus, they are indispensable parties. However, the seller of the property is not an indispensable party. x x x The Mariano Heirs, as the alleged sellers of the property, are not indispensable parties. They are at best necessary parties[.] x x x Necessary parties may be joined in the case "to adjudicate the whole controversy," but the case may go on without them because a judgment may be rendered without any effect on their rights and interests. x x x [I]t is clear that the Mariano Heirs are not indispensable parties. They have already sold all their interests in the property to the Spouses Aboitiz. They will no longer be affected, benefited, or injured by any ruling of this Court on the matter, whether it grants or denies the complaint for reconveyance.

11. **CIVIL LAW; SALES; INNOCENT PURCHASER FOR VALUE, DEFINED; BUYERS ARE NOT OBLIGED TO LOOK BEYOND THE TITLE BEFORE THEY PURCHASE THE PROPERTY; EXCEPTION TO THE RULE DOES NOT APPLY SINCE THERE WAS NO SHOWING THAT RESPONDENTS HAD ANY KNOWLEDGE OF THE DEFECT IN THE TITLE.—** An innocent purchaser for value refers to the buyer of the property who pays for its full and fair

price without or before notice of another person's right or interest in it. He or she buys the property believing that "the [seller] [i]s the owner and could [transfer] the title to the property." x x x However, if a property is registered, the buyer of a parcel of land is not obliged to look beyond the transfer certificate of title to be considered a purchaser in good faith for value. x x x Thus, respondents were not obliged to look beyond the title before they purchased the property. They may rely solely on the face of the title. The only exception to the rule is when the purchaser has actual knowledge of any defect or other circumstance that would cause "a reasonably cautious man" to inquire into the title of the seller. If there is anything which arouses suspicion, the vendee is obliged to investigate beyond the face of the title. Otherwise, the vendee cannot be deemed a purchaser in good faith entitled to protection under the law. In this case, there is no showing that respondents Jose, Ernesto, and Isabel had any knowledge of the defect in the title. Considering that the annotation that the Spouses Po are invoking is found in the tax declaration and not in the title of the property, respondents Jose, Ernesto, and Isabel cannot be deemed purchasers in bad faith.

APPEARANCES OF COUNSEL

Zoza & Quijano Law Offices for spouses Peter Po and Victoria Po.

Alvarez Nuez Galang Espina and Lopez Law Offices for Spouses Roberto Aboitiz and Maria Cristina Cabarrus.

D E C I S I O N

LEONEN, *J*.:

This resolves two (2) Petitions for Review on Certiorari[1] assailing the Court of Appeals' October 31, 2012 Decision[2]

---

[1] The Petitions were filed under Rule 45 of the Rules of Court.

[2] *Rollo* (G.R. No. 208450), pp. 42-57-A. The Decision was penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Gabriel T. Ingles and Maria Elisa Sempio Diy of the Special Nineteenth Division, Court of Appeals, Cebu City.

and its June 17, 2013 Resolution[3] in CA-G.R. CV No. 03803. The assailed decision affirmed the Regional Trial Court's Decision,[4] which declared the spouses Peter Po and Victoria Po (Spouses Po) as the rightful owners of the parcel of land. However, the Court of Appeals ruled that respondents Jose Maria Moraza (Jose), spouses Ernesto Aboitiz (Ernesto), and Isabel Aboitiz (Isabel) were innocent buyers in good faith whose titles were entitled to protection.[5] The assailed resolution denied the Motion for Partial Reconsideration of the spouses Roberto Aboitiz and Maria Cristina Cabarrus (Spouses Aboitiz).[6]

The Spouses Aboitiz filed the Petition[7] docketed as G.R. No. 208450. The Spouses Po filed the Petition[8] docketed as G.R. No. 208497. These cases are consolidated in the case at bar.

This case involves a parcel of land located in Cabancalan, Mandaue City,[9] initially registered as Original Certificate of Title No. 0-887, and titled under the name of Roberto Aboitiz (Roberto).[10] The land is referred to as Lot No. 2835.[11]

This parcel of land originally belonged to the late Mariano Seno (Mariano).[12]

---

[3] *Id*. at 60-61. The Resolution was penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Gabriel T. Ingles and Maria Elisa Sempio Diy of the Special Nineteenth Division, Court of Appeals, Cebu City.

[4] *Rollo* (G.R. No. 208497), pp. 60-71. The Decision, docketed as Civil Case No. MAN-2803, was penned by Presiding Judge Ulric R. Cañete of Branch 55, Regional Trial Court, Mandaue City.

[5] *Rollo* (G.R. No. 208450), pp. 55-56.

[6] *Id*. at 60-61.

[7] *Id*. at 11-40-A.

[8] *Rollo* (G.R. No. 208497), pp. 10-27.

[9] *Rollo* (G.R. No. 208450), p. 43.

[10] *Id*. at 45.

[11] *Id*.

[12] *Id*. at 43.

On July 31, 1973, Mariano executed a Deed of Absolute Sale in favor of his son, Ciriaco Seno (Ciriaco), over a 1.0120-hectare land in Cebu covered by Tax Declaration No. 43358.[13] This property included two (2) lots: Lot No. 2807 and the land subject of this case, Lot No. 2835.[14]

On May 5, 1978, Ciriaco sold the two (2) lots to Victoria Po (Victoria).[15] The parties executed a Deed of Absolute Sale.[16]

On July 15, 1982, Mariano died and was survived by his five (5) children (Mariano Heirs): Esperanza Seno Vda. De Kuizon, Ramon Seno,[17] Benita Seno Vda. De Lim, Simeon Seno,[18] and Ciriaco.[19]

In 1990, Peter Po (Peter) discovered that Ciriaco "had executed a [q]uitclaim dated August 7, 1989 renouncing [his] interest over Lot [No.] 2807 in favor of [petitioner] Roberto."[20] In the quitclaim, Ciriaco stated that he was "the declared owner of Lot [Nos.] 2835 and 2807."[21]

The Spouses Po confronted Ciriaco.[22] By way of remedy, Ciriaco and the Spouses Po executed a Memorandum of Agreement dated June 28, 1990 in which Ciriaco agreed to pay Peter the difference between the amount paid by the Spouses Po as consideration for the entire property and the value of the land the Spouses Po were left with after the quitclaim.[23]

---

[13] *Id*. at 43-44.

[14] *Id.*

[15] *Id*. at 44.

[16] *Id.*

[17] Deceased and survived by his spouse and seven (7) children.

[18] Deceased and survived by his spouse and six (6) children.

[19] *Rollo* (G.R. No. 208450), p. 43.

[20] *Id*. at 44.

[21] *Id.* at 87.

[22] *Id*. at 44.

[23] *Id.*

However, also in 1990, Lot No. 2835 was also sold to Roberto.[24] The Mariano Heirs, including Ciriaco, executed separate deeds of absolute sale in favor of Roberto.[25] Thereafter, Roberto immediately developed the lot as part of a subdivision called North Town Homes.[26]

In 1991, the Spouses Po declared Lot No. 2835 for taxation purposes and was issued Tax Declaration No. 0634-A.[27]

In 1992, Roberto also declared Lot No. 2835 for taxation purposes and was issued Tax Declaration No. 1100, annotated with: "*This tax declaration is also declared in the name of Mrs. VICTORIA LEE PO married to PETER PO under [T]ax [Declaration] [N]o. 0634-A so that one may be considered a duplicate to the other."*[28]

On April 19, 1993, Roberto filed an application for original registration of Lot No. 2835 with the Mandaue City Regional Trial Court, acting as land registration court.[29] The case was raffled to Branch 28 and docketed as LRC Case No. N-208.[30]

In its Decision dated October 28, 1993, the trial court granted the issuance of Original Certificate of Title No. 0-887 in the name of Roberto.[31] The lot was immediately subdivided with portions sold to Ernesto and Jose.[32]

On November 19, 1996, the Spouses Po filed a complaint to recover the land and to declare nullity of title with damages.[33]

---

[24] *Id*.

[25] *Id*.

[26] *Id*. at 16, Petition for Review of Spouses Aboitiz.

[27] *Id.*

[28] *Id*. at 45.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id*. *See rollo,* p. 74. Ernesto is married to Maria Isabel Aboitiz.

[33] *Id*. In the CA Decision and in the Spouses Po's Brief for the Appellee

The complaint was docketed in Branch 55, Regional Trial Court of Mandaue City.[34]

The trial court ruled in favor of the Spouses Po in its Decision dated November 23, 2009:

> WHEREFORE, premises considered, judgment is rendered in favor of plaintiffs, and against defendants, declaring the plaintiffs as owner of subject land and ordering the defendants reconvey and/or return to plaintiffs Lot No. 2835; declaring as absolute nullity all the documents of sale involving Lot 2835 executed by the Heirs of Mariano Seno in favor of defendant Roberto Aboitiz and such other documents used in the improvident issuance of titles in the name of defendants, and to cancel the said titles.[35]

The Spouses Aboitiz appealed to the Court of Appeals. The Court of Appeals, in its Decision dated October 31, 2012, partially affirmed the trial court decision, declaring the Spouses Po as the rightful owner of the land. However, it ruled that the titles issued to respondents Jose, Ernesto, and Isabel should be respected.[36]

The Court of Appeals discussed the inapplicability of the rules on double sale and the doctrine of buyer in good faith since the land was not yet registered when it was sold to the Spouses Po.[37] However, it ruled in favor of the Spouses Po on the premise that registered property may be reconveyed to the "rightful or legal owner or to the one with a better right if the title [was] wrongfully or erroneously registered in another person's name."[38] The Court of Appeals held that the Mariano

---

filed with the Court of Appeals, the date of filing of the complaint is November 19, 1996. *See rollo*, (G.R. No. 208450), pp. 45 and 193, respectively.

[34] *Id.* at 42.

[35] *Id.* at 175.

[36] *Id.* at 57.

[37] *Id.* at 48-49.

[38] *Id.* at 54.

Heirs were no longer the owners of the lot at the time they sold it to Roberto in 1990 because Mariano, during his lifetime, already sold this to Ciriaco in 1973.[39]

It found that the Deed of Absolute Sale between Ciriaco and the Spouses Po was duly notarized and was thus presumed regular on its face.[40] Their Memorandum of Agreement did not cancel or rescind the Deed of Absolute Sale but rather strengthened their claim that they "entered into a contract of [s]ale."[41]

It likewise ruled that, contrary to the assertion of the Spouses Aboitiz, there was no showing that Ciriaco merely held the property in trust for the Mariano Heirs.[42]

It held that the action of the Spouses Po had not yet prescribed because their complaint in 1996 was within the 10-year prescriptive period as the title in favor of the Spouses Aboitiz was issued in 1994.[43]

However, the Court of Appeals ruled that the certificates of title of Jose, Ernesto, and Isabel were valid as they were innocent buyers in good faith.[44]

The Spouses Aboitiz thus filed their Petition for Review, which was docketed as G.R. No. 208450.[45] They argue that the Decision of Branch 55, Regional Trial Court of Mandaue City granting the complaint of the Spouses Po is void for lack of jurisdiction over the matter.[46] They claim that a branch of the Regional Trial Court has no jurisdiction to nullify a final

---

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

[40] *Id*. at 49.

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

[42] *Id*. at 50.

[43] *Id*. at 55-56.

[44] *Id*.

[45] *Id*. at 11-40-A.

[46] *Id*. at 23.

and executory decision of a co-equal branch;[47] it is the Court of Appeals that has this jurisdiction.[48]

They likewise assert that the Spouses Po's cause of action has prescribed[49] and allegedly accrued when the Deed of Absolute Sale between the Spouses Po and Ciriaco was executed on May 5, 1978.[50] They maintain that more than 10 years had elapsed when the complaint was filed on November 12, 1996, thus barring the action through prescription.[51]

The Spouses Aboitiz further insist that "estoppel and laches have already set in."[52] They claim that they have been "in open, public, continuous, uninterrupted, peaceful[,] and adverse possession" in the concept of owners over the property for "46 years as of 1993," without the Spouses Po acting on the Deed of Absolute Sale.[53] They attest that the development of North Town Homes Subdivision "was covered by utmost publicity," but the Spouses Po did not immediately question the development or interpose any objection during the registration proceedings.[54]

They posit that the Deed of Absolute Sale between Ciriaco and the Spouses Po is "clearly fake and fraudulent"[55] as evidenced by certifications of its non-existence in the notarial books and the Spouses Po's failure to enforce their rights over the property until 18 years later.[56] They also affirm that the Deed of Absolute

---

[47] *Id*. at 21.

[48] *Id*. at 23.

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

[50] *Id*.

[51] *Id.* In the CA Decision and in the Spouses Po's Brief for the Appellee filed with the Court of Appeals, the date of filing of the complaint is November 19, 1996. *See rollo,* (G.R. No. 208450), pp. 45 and 193, respectively.

[52] *Id*. at 32.

[53] *Id.* at 25.

[54] *Id.* at 29.

[55] *Id.* at 32.

[56] *Id*.

Sale between Ciriaco and the Spouses Po is inadmissible as no documentary stamp was paid and affixed. [57]

Lastly, they contend that the Mariano Heirs should have been impleaded in the action as they are indispensable parties.[58]

The Spouses Po filed a Comment[59] where they argued that the Regional Trial Court had jurisdiction when it granted their complaint because the case filed by the Spouses Aboitiz was for the registration of the land, while the case they filed was for reconveyance.[60] They insisted that their action had not prescribed because an action for reconveyance prescribes in 10 years from the "date of issuance of the certificate of title over the property."[61] They argued that "laches ha[d] not set in."[62] They claimed that the notarized Deed of Absolute Sale between them and Ciriaco was not fake or fraudulent and was admissible in evidence[63] whereas the Spouses Aboitiz failed "to overcome [its] presumption of regularity and due execution."[64] They asserted that "the documentary stamps tax ha[d] been paid"[65] and that the Mariano Heirs were not indispensable parties.[66]

Spouses Aboitiz filed a Reply[67] reiterating their arguments in the Petition.

---

[57] *Id.*

[58] *Id*. at 34.

[59] *Id*. at 275-288.

[60] *Id.* at 282.

[61] *Id*. at 283-284.

[62] *Id*. at 284.

[63] *Id*. at 285.

[64] *Id.*

[65] *Id*.

[66] *Id*. at 287-288.

[67] *Id.* at 293-307.

The Spouses Po also filed a Petition for Review, which was docketed as G.R. No. 208497. They claim that respondents Jose, Ernesto, and Isabel are not "innocent purchasers for value."[68] They allegedly knew of the defective title of Roberto because his tax declaration had the following annotation: "This tax declaration is also declared in the name of Mrs. VICTORIA LEE PO, married to PETER PO under tax dec. No. 0634-A so that one may be considered a duplicate to the other. (Section 89 Paragraph H PD 464)."[69]

Spouses Aboitiz filed a Comment.[70] Aside from reiterating their assertions in their Petition for Review in G.R No. 208450, they argued that there was no evidence that they acted in bad faith as "subdivision lot buyers [were] not obliged to go beyond the [T]orrens title."[71]

Spouses Po filed a Reply.[72]

For resolution are the following issues:

First, whether the Regional Trial Court has jurisdiction over the Spouses Peter and Victoria Po's complaint;

Second, whether the action is barred by prescription,

Third, whether the doctrines of estoppel and laches apply;

Fourth, whether the land registration court's finding that Ciriaco Seno only held the property in trust for the Mariano Heirs is binding as *res judicata* in this case;

Fifth, whether the Deed of Absolute Sale between Ciriaco Seno and the Spouses Peter and Victoria Po should be considered as evidence of their entitlement to the property;

---

[68] *Rollo* (G.R. No. 208497), p. 18.

[69] *Id.*

[70] *Id*. at 86-106.

[71] *Id*. at 103.

[72] *Id*. at 134-142, Reply to Respondents' Comment.

Sixth, whether the Mariano Heirs, as sellers in a deed of conveyance of realty, are indispensable parties; and

Finally, whether the respondents Jose Maria Moraza, Ernesto Aboitiz, and Isabel Aboitiz are innocent purchasers in good faith.

I

The Spouses Aboitiz argue that Branch 55, Regional Trial Court did not have jurisdiction to nullify the final and executory Decision of Branch 28, Regional Trial Court in LRC Case No. N-208.[73] They claim that that it is the Court of Appeals that has jurisdiction to annul judgments of the Regional Trial Court.[74]

However, the instant action is not for the annulment of judgment of a Regional Trial Court. It is a complaint for reconveyance, cancellation of title, and damages.[75]

A complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful. [76] It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith.[77] It seeks the transfer of a title issued in a valid proceeding. The relief prayed for may be granted on the basis of intrinsic fraud—fraud committed on the true owner instead of fraud committed on the procedure amounting to lack of jurisdiction.

An action for annulment of title questions the validity of the title because of lack of due process of law. There is an allegation

---

[73] *Rollo* (G.R. No. 208450), p. 20.

[74] *Id.* at 23.

[75] *Id.* at 81-85.

[76] *Toledo vs. Court of Appeals,* G.R. No. 167838, August 5, 2015, 765 SCRA 104, 115 [Per *J.* Jardeleza, Third Division].

[77] *Toledo vs. Court of Appeals,* G.R. No. 167838, August 5, 2015, 765 SCRA 104, 115 [Per *J.* Jardeleza, Third Division].

of nullity in the procedure and thus the invalidity of the title that is issued.

The complaint of the Spouses Po asserted that they were the true owners of the parcel of land which was registered in the name of the Spouses Aboitiz.[78] They alleged that they acquired the property from Ciriaco, who acquired it from Mariano.[79] They claimed that the Spouses Aboitiz had the property registered without their knowledge and through fraud.[80] Thus, they sought to recover the property and to cancel the title of the Spouses Aboitiz.[81] Thus the prayer in their Complaint stated:

> WHEREFORE, premises considered, this Honorable Court is respectfully prayed to render judgment in favor of plaintiffs and against defendants, ordering the latter as follows:
>
> 1. To reconvey and/or return to plaintiffs Lot No. 2835 which is the subject matter of this complaint;
>
> 2. To declare as absolute nullity all the documents of sale involving Lot 2835 in favor of defendants and such other documents used in the improvident issuance of the Title in the name of defendants, and to cancel said Title;
>
> 3. To pay jointly and severally the amount of ₱1,000,000.00 as moral damages; ₱500,000.00 as actual damages; ₱100,000.00 as attorneys fees and ₱20,000.00 as litigation expenses.
>
> Plaintiffs further pray for such other reliefs and remedies just and equitable in the premises.[82]

Except for actions falling within the jurisdiction of the Municipal Trial Courts, the Regional Trial Courts have exclusive original jurisdiction over actions involving "title to, or possession

---

[78] *Rollo* (G.R. No. 208450), pp. 81-85.

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] *Id*. at 83.

of, real property."[83] Section 19 of Batas Pambansa Blg. 129 provides:

> Section 19. *Jurisdiction in Civil Cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> . . . .
>
> (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts[.]

An action for reconveyance and annulment of title is an action involving the title to real property.[84]

The complaint of the Spouses Po is clearly an action for reconveyance and annulment of title. Thus, the Regional Trial Court has jurisdiction to hear the case.

The Spouses Aboitiz claim that it is the Court of Appeals that has jurisdiction over the annulment of Regional Trial Court judgments.[85]

The jurisdiction of the Court of Appeals is provided in Section 9 of Batas Pambansa Blg. 129:

> Section 9. *Jurisdiction*. — The Intermediate Appellate Court shall exercise:
>
> . . . .
>
> (2) Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts[.]

While the Court of Appeals has jurisdiction to annul judgments of the Regional Trial Courts, the case at bar is not for the

---

[83] *Heirs of Concha, Sr. v. Spouses Lumocso,* 564 Phil. 580, 595-597 (2007) [Per *C.J*. Puno, First Division].

[84] *Id*. at 596-597.

[85] *Rollo* (G.R No. 208450), p. 23, Petition.

annulment of a *judgment* of a Regional Trial Court. It is for reconveyance and the annulment of *title*.

The difference between these two (2) actions was discussed in *Toledo v. Court of Appeals*:[86]

An action for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. An action for reconveyance, on the other hand, is a legal and equitable remedy granted to the rightful owner of land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The Court of Appeals has exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts whereas actions for reconveyance of real property may be filed before the Regional Trial Courts or the Municipal Trial Courts, depending on the assessed value of the property involved.

. . . .

Petitioners allege that: first, they are the owners of the land by virtue of a sale between their and respondents' predecessors-in-interest; and second, that respondents Ramoses and ARC Marketing illegally dispossessed them by having the same property registered in respondents' names. Thus, far from establishing a case for annulment of judgment, the foregoing allegations clearly show a case for reconveyance.[87] (Citations omitted)

As stated, a complaint for reconveyance is a remedy where the plaintiff argues for an order for the defendant to transfer its title issued in a proceeding not otherwise invalid. The relief prayed for may be granted on the basis of intrinsic rather than extrinsic fraud; that is, fraud committed on the real owner rather than fraud committed on the procedure amounting to lack of jurisdiction.

---

[86] G.R. No. 167838, August 5, 2015, 765 SCRA 104 [Per *J*. Jardeleza, Third Division].

[87] *Id.* at 113-118.

An action for annulment of title, on the other hand, questions the validity of the grant of title on grounds which amount to lack of due process of law. The remedy is premised in the nullity of the procedure and thus the invalidity of the title that is issued. Title that is invalidated as a result of a successful action for annulment against the decision of a Regional Trial Court acting as a land registration court may still however be granted on the merits in another proceeding not infected by lack of jurisdiction or extrinsic fraud if its legal basis on the merits is properly alleged and proven.

Considering the Spouses Aboitiz's fraudulent registration without the Spouses Po's knowledge and the latter's assertion of their ownership of the land, their right to recover the property and to cancel the Spouses Aboitiz's[88] title, the action is for reconveyance and annulment of title and not for annulment of judgment.

Thus, the Regional Trial Court has jurisdiction to hear this case.

II

The Spouses Aboitiz argue that the Spouses Po's cause of action has prescribed.[89] They claim that prescription has set in because the original complaint was filed only on November 12, 1996, after more than 10 years after the Deed of Absolute Sale between Ciriaco and Spouses Po was executed on May 5, 1978. [90]

The Spouses Po's action has not prescribed.

---

[88] *Rollo* (G.R. No. 208450), pp. 81-85.

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

[90] *Id*. In the CA Decision and in the Spouses Po's Brief for the Appellee filed with the Court of Appeals, the date of filing of the complaint is November 19, 1996. *See rollo*, (G.R. No. 208450), pp. 45 and 193, respectively.

"[A]n action for reconveyance . . . prescribes in [10] years from the issuance of the Torrens title over the property."[91] The basis for this is Section 53, Paragraph 3[92] of Presidential Decree No. 1529[93] in relation to Articles 1456[94] and 1144(2)[95] of the Civil Code.[96]

Under Presidential Decree No. 1529 (Property Registration Decree), the owner of a property may avail of legal remedies against a registration procured by fraud:

SECTION 53. *Presentation of Owner's Duplicate Upon Entry of New Certificate*. — . . .

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud

---

[91] *Amerol v. Bagumbaran,* 238 Phil. 397, 409 (1987) [Per *J*. Sarmiento, Second Division]; *Caro v. Court of Appeals,* 259 Phil. 891, 898 (1989) [Per *J.* Medialdea, First Division].

[92] Pres. Decree No. 1529, Sec. 53, par. 3 provides:

Section 53. Presentation of Owner's Duplicate Upon Entry of New Certificate. — . . .

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

[93] Property Registration Decree (1978).

[94] Civil Code, Art. 1456 provides:

Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[95] Civil Code, Art. 1144(2) provides:

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

. . . .

(2) Upon an obligation created by law[.]

[96] *Caro v. Court of Appeals,* 259 Phil. 891, 898 (1989) [Per *J.* Medialdea, First Division].

without prejudice, however, to the rights of any innocent holder for value of a certificate of title. . .

Article 1456 of the Civil Code provides that a person acquiring a property through fraud becomes an implied trustee of the property's true and lawful owner.[97]

An implied trust is based on equity and is either (i) a constructive trust, or (ii) a resulting trust.[98] A resulting trust is created by implication of law and is presumed as intended by the parties.[99] A constructive trust is created by force of law[100] such as when a title is registered in favor of a person other than the true owner.[101]

The implied trustee only acquires the right "to the beneficial enjoyment of [the] property."[102] The legal title remains with the true owner.[103] In *Crisostomo v. Garcia, Jr.*:[104]

Art. 1456 of the Civil Code provides:

---

[97] CIVIL CODE, Art. 1456 provides:

Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[98] *Salvatierra v. Court of Appeals,* 329 Phil. 758, 775 (1996) [Per *J.* Hermosisima, Jr., Third Division].

[99] *Id.*

[100] *Id.*

[101] Civil Code, Art. 1456 provides:

Article 1456. – If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[102] *Salvatierra v. Court of Appeals,* 329 Phil. 758, 775 (1996)[Per Hermosisima, Jr., Third Division].

[103] *Id.*

[104] *Crisostomo v. Garcia, Jr.,* 516 Phil. 743 (2006) [Per *J.* Chico-Nazario, First Division].

> Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

> Thus, it was held that when a party uses fraud or concealment to obtain a certificate of title of property, a constructive trust is created in favor of the defrauded party.

> Constructive trusts are "created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold."

> When property is registered in another's name, an implied or constructive trust is created by law in favor of the true owner. The action for reconveyance of the title to the rightful owner prescribes in 10 years from the issuance of the title. [105] (Citations omitted)

Thus, the law creates a trust in favor of the property's true owner.

The prescriptive period to enforce this trust is 10 years from the time the right of action accrues. Article 1144 of the Civil Code provides:

> Article 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
> (2) Upon an obligation created by law;
> (3) Upon a judgment.

In an action for reconveyance, the right of action accrues from the time the property is registered.[106]

In *Crisostomo*,[107] the petitioners were able to transfer the property under their names without knowledge of the

---

[105] *Id*. at 752-753.

[106] *Id*. at 752.

[107] *Crisostomo v. Garcia, Jr.,* 516 Phil. 743 (2006) [Per *J.* Chico-Nazario, First Division].

respondent.[108] The respondent filed an action for reconveyance.[109] In arguing that the action for reconveyance had prescribed, the petitioners claimed that the cause of action of the respondent should be based on the latter's Deed of Sale and thus the respondent's right of action should have accrued from its execution.[110] This Court, however, ruled that the right of action accrued from the time the property was registered because registration is the act that signifies that the adverse party repudiates the implied trust:

In the case at bar, respondent's action which is for Reconveyance and Cancellation of Title is based on an implied trust under Art. 1456 of the Civil Code since he averred in his complaint that through fraud petitioners were able to obtain a Certificate of Title over the property. He does not seek the annulment of a voidable contract whereby Articles 1390 and 1391 of the Civil Code would find application such that the cause of action would prescribe in four years.

. . . .

An action for reconveyance based on implied or constructive trust prescribes in ten years from the alleged fraudulent registration or date of issuance of the certificate of title over the property.

It is now well-settled that the prescriptive period to recover property obtained by fraud or mistake, giving rise to an implied trust under Art. 1456 of the Civil Code, is 10 years pursuant to Art. 1144. *This ten-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land.*[111] (Citations omitted, emphasis supplied)

Likewise, in *Duque v. Domingo:*[112]

---

[108] *Id*. at 746.

[109] *Id*. at 747.

[110] *Id*. at 746.

[111] *Id.* at 752-753.

[112] 170 Phil. 676 (1977) [Per *J*. Fernandez, First Division].

The registration of an instrument in the Office of the Register of Deeds constitutes constructive notice to the whole world, and, therefore, discovery of the fraud is deemed to have taken place at the time of registration. Such registration is deemed to be a constructive notice that the alleged fiduciary or trust relationship has been repudiated. It is now settled that an action on an implied or constructive trust prescribes in ten (10) years from the date the right of action accrued. The issuance of Transfer Certificate of Title No. 7501 in 1931 to Mariano Duque commenced the effective assertion of adverse title for the purpose of the statute of limitations.[113] (Citations omitted)

Registration of the property is a "constructive notice to the whole world."[114] Thus, in registering the property, the adverse party repudiates the implied trust.[115] Necessarily, the cause of action accrues upon registration.[116]

An action for reconveyance and annulment of title does not seek to question the contract which allowed the adverse party to obtain the title to the property.[117] What is put on issue in an action for reconveyance and cancellation of title is the ownership of the property and its registration.[118] It does not question any fraudulent contract.[119] Should that be the case, the applicable provisions are Articles 1390[120] and 1391[121] of the Civil Code.[122]

---

[113] *Id.* at 686.

[114] *Id*.

[115] *Id.*

[116] *Id.*

[117] *Crisostomo v. Garcia, Jr.,* 516 Phil. 743, 751-752 (2006) [Per *J.* Chico-Nazario, First Division].

[118] *Id.*

[119] *Id.*

[120] CIVIL CODE, Art. 1390 provides:

Article 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

(1) Those where one of the contracting parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

Thus, an action for reconveyance and cancellation of title prescribes in 10 years from the time of the issuance of the Torrens title over the property.[123]

Considering that the Spouses Po's complaint was filed on November 19, 1996, less than three (3) years from the issuance of the Torrens title over the property on April 6, 1994, it is well within the 10-year prescriptive period imposed on an action for reconveyance.

III

The Spouses Aboitiz insist that estoppel and laches have already set in.[124] They claim that they have been in "open, continuous, public, peaceful, [and] adverse" possession in the concept of owners over the property for "46 years as of 1993," without the Spouses Po acting on their Deed of Absolute Sale.[125] Moreover, the development of North Town Homes Subdivision "was covered by utmost publicity" but the Spouses Po did not promptly question the development.[126] In fact, they did not interpose any objection during the registration proceedings.[127]

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[121] CIVIL CODE, Art. 1391 provides:

Article 1391. The action for annulment shall be brought within four years. This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

[122] *Crisostomo v. Garcia, Jr.,* 516 Phil. 743, 751-752 (2006) [Per *J.* Chico-Nazario, First Division].

[123] *Id.* at 752–753.

[124] *Rollo* (G.R. No. 208450), pp. 29-31, Petition.

[125] *Id.* at 25.

[126] *Id.* at 29.

[127] *Id.* at 30–31.

There is laches when a party was negligent or has failed "to assert a right within a reasonable time," thus giving rise to the presumption that he or she has abandoned it.[128] Laches has set in when it is already inequitable or unfair to allow the party to assert the right.[129] The elements of laches were enumerated in *Ignacio v. Basilio:*

> There is laches when: (1) the conduct of the defendant or one under whom he claims, gave rise to the situation complained of; (2) there was delay in asserting a right after knowledge of the defendant's conduct and after an opportunity to sue; (3) defendant had no knowledge or notice that the complainant would assert his right; (4) there is injury or prejudice to the defendant in the event relief is accorded to the complainant.[130] (Citation omitted)

"Laches is different from prescription."[131] Prescription deals with delay itself and thus is an issue of how much time has passed.[132] The time period when prescription is deemed to have set in is fixed by law.[133] Laches, on the other hand, concerns itself with the effect of delay and not the period of time that has lapsed.[134] It asks the question whether the delay has changed "the condition of the property or the relation of the parties" such that it is no longer equitable to insist on the original right.[135] In *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*:[136]

---

[128] *Ignacio v. Basilio*, 418 Phil. 256, 265–266 (2001) [Per *J*. Quisumbing, Second Division].

[129] *Id*. at 266.

[130] *Id*. at 266.

[131] *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*, 125 Phil. 204, 219 (1966) [Per *J*. Zaldivar, *En Banc*].

[132] *Id*.

[133] *Id.*

[134] *Id*.

[135] *Id.*

[136] 125 Phil. 204 (1966) [Per *J*. Zaldivar, *En Banc*].

Appellee is correct in its contention that the defense of laches applies independently of prescription. Laches is different from the statute of limitations. Prescription is concerned with the fact of delay. Whereas laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on fixed time, laches is not.[137]

The defense of laches is based on equity.[138] It is not based on the title of the party invoking it, but on the right holder's "long inaction or inexcusable neglect" to assert his claim.[139]

This Court rules that the Spouses Po is not barred by laches. There is no showing that they abandoned their right to the property. The factual findings reveal that the Spouses Po had their rights over the property registered in the assessor's office.[140] They testified that they introduced improvements by cultivating fruit trees after they purchased the lots.[141] When the Spouses Po discovered that Ciriaco executed a quitclaim renouncing his interest over Lot No. 2807 in favor of Roberto, the Spouses Po executed a Memorandum of Agreement with Ciriaco to protect their interest in Lot No. 2835.[142]

The Spouses Po also had the property declared for taxation purposes in their names and Tax Declaration No. 0634-A was issued.[143] Thus, when the Spouses Aboitiz also had the property

---

[137] *Id.* at 219.

[138] *Pabalate v. Echarri, Jr.,* 147 Phil. 472, 475 (1971) [Per *J.* Makalintal, *En Banc*].

[139] *Id.*

[140] *Rollo* (G.R. No. 208450), pp. 48-49.

[141] *Rollo* (G.R. No. 208497), p. 66.

[142] *Rollo* (G.R. No. 208450), p. 44.

[143] *Id.* at 44.

declared for taxation purposes, it had the annotation: "This tax declaration is also declared in the name of Mrs. Victoria Lee Po, married to Peter Po under tax dec. no. 0634-A so that one may be considered a duplicate to the other."[144]

The Spouses Aboitiz only acquired their alleged rights over the property in 1990, when the Mariano Heirs executed the Deeds of Sale in their favor.[145] Assuming the Spouses Aboitiz immediately took possession and began construction in 1990, it cannot be said that the Spouses Po were in delay in asserting their right. In the Spouses Po's complaint, they asserted that they made demands upon the Spouses Aboitiz to reconvey to them the property.[146] They also referred the matter to the barangay for conciliation:

> 11) That demands were made upon the defendants to reconvey to plaintiffs Lot 2835 unlawfully and feloniously acquired by defendants, but to no avail, thereby compelling the plaintiffs to elevate the matter for barangay conciliation, and for failure of the parties to effect a settlement, the proper Certification to file action was then issued, a copy of which is hereto attached as Annex "L."[147]

In their Answer with Counterclaim, the Spouses Aboitiz did not deny that demands were made upon them and that the matter was elevated for barangay conciliation:

> 8. Par. 11 is denied as regards the all[e]gation that Lot 2835 was feloniously and un[l]awfully acquired by defendants, for being false. The truth is that defendants were in good faith in acquiring same property. Defendants refused to meet the demands of settlement by plaintiffs because they are strangers to the property in question.[148]

When they discovered that the property was registered in the name of the Spouses Aboitiz in 1993, the Spouses Po then

---

[144] *Id*. at 45.

[145] *Id*. at 44.

[146] *Id.* at 84.

[147] *Id*.

[148] *Id*. at 95.

filed the instant complaint to recover the property sold to them by Ciriaco, alleging that it was done without their knowledge, through evident bad faith and fraud.[149] The Spouses Po filed this case in less than three (3) years from the time of registration.

Based on these circumstances, the elements of laches are clearly lacking in this case. There was no delay in asserting their right over the property, and the Spouses Aboitiz had knowledge that the Spouses Po would assert their right.

Thus, it cannot be said that they are barred by laches.

IV

The Spouses Aboitiz insist that there is already a finding by the Regional Trial Court in LRC Case No. N-208 that Ciriaco merely held the property "in trust for the [Mariano Heirs]."[150] Thus, Ciriaco could not have validly sold the property to the Spouses Po.[151] They claim that these findings are binding on the whole world because land registration proceedings are actions in rem.[152]

In the Decision in LRC Case No. N-208, no one opposed the application for registration.[153] Moreover, the Spouses Aboitiz presented only one (1) witness, Gregorio Espina (Espina), an employee of Roberto,[154] who testified:

> That this parcel of land is covered by tax declarations, to wit:
>
> 1) Tax Dec. No. 43174 in the name of Ciriaco Seno for the year 1953 (Exh. "T");
>
> . . . .

---

[149] *Id.* at 45.

[150] *Id*. at 25.

[151] *Id*.

[152] *Id*. at 26.

[153] *Id*. at 67.

[154] *Id*. at 68.

11) Tax Dec. No. 2835 in the name of applicant, Roberto Aboitiz for the year 1991 (Exh. "DD").

That the tax declarations covering Lot No. 2835 are in the name of Ciriaco Seno because the heirs of Mariano Seno have agreed that Lot No. 2835 be held in trust by Ciriaco Seno in favor of the heirs.[155]

This Court rules that this cannot be binding in this action for reconveyance.

Res judicata embraces two (2) concepts: (i) bar by prior judgment and (ii) conclusiveness of judgment, respectively covered under Rule 39, Section 47 of the Rules of Court, paragraphs (b) and (c):[156]

Section 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

. . . .

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Res judicata in the concept of bar by prior judgment proscribes the filing of another action based on "the same claim, demand, or cause of action."[157] It applies when the following are present:

---

[155] *Id*. at 69.

[156] *Dy v. Yu,* G.R. No. 202632, July 8, 2015, 762 SCRA 357, 373 [Per *J*. Perlas-Bernabe, First Division].

[157] *Id*.

(a) there is a final judgment or order; (b) it is a judgment or order on the merits; (c) it was "rendered by a court having jurisdiction over the subject matter and parties"; and (d) there is "identity of parties, of subject matter, and of causes of action" between the first and second actions.[158]

Res judicata in the concept of conclusiveness of judgment applies when there is an identity of issues in two (2) cases between the same parties involving different causes of action.[159] Its effect is to bar "the relitigation of particular facts or issues" which have already been adjudicated in the other case.[160] In *Calalang v. Register of Deeds of Quezon City:*[161]

> The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue[s] be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus vs. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issues.[162]

---

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] 301 Phil. 91 (1994) [Per *J.* Melo, *En Banc*].

[162] *Id.* at 103.

However, in *Racoma v. Fortich*,[163] this Court held that *res judicata* could not be a defense in an action for reconveyance based on fraud where the complainant had no knowledge of the application for registration:

> The other ground upon which the lower court dismissed the complaint is *res judicata. It is stated in the order of dismissal that the plaintiff had admitted that the property in controversy was applied for by defendant Maximina Fortich in a cadastral proceeding and under Act 496; that the proceedings were in rem* and, therefore, the whole world, including the plaintiff, were parties thereto and bound by the judgment thereon . . . [I]t is obvious that the lower court was referring to the legal effect of the conclusiveness against all persons of the *in rem* decision in the cadastral case rather than the actual fact that the plaintiff was a claimant who appeared in the said case, for he alleged in his complaint that he "has no knowledge whatsoever of the application for registration filed by defendant Maximina Fortich and the order of decree of registration issued in favor of the defendant Maximina Fortich by this Honorable Court until on February 25, 1967 . . ." (Record on Appeal, page 30). Such being the case, then an action for reconveyance is available to the plaintiff, the decree of registration notwithstanding, for . . .
>
> > ". . . , it is now a well-settled doctrine in this jurisdiction that the existence of a decree of registration in favor of one party is no bar to an action to compel reconveyance of the property to the true owner, which is an action *in personam*, even if such action be instituted after the year fixed by Section 38 of the Land Registration Act as a limit to the review of the registration decree, provided it is shown that the registration is wrongful and the property sought to be reconveyed has not passed to an innocent third party holder for value.["][164] (Emphasis supplied)

---

[163] 148-A Phil. 454 (1971) [Per *J.*J.B.L. Reyes, *En Banc*].

[164] *Id*. at 460-461. See also *Cabanos vs. Register of Deeds*, 40 Phil. 620 (1919) [Per *J.* Torres, First Division]; *Dizon vs. Lacap*, 50 Phil. 193 (1927) [Per *J.* Street, Second Division];*Escobar vs. Locsin*, 74 Phil. 86 (1943) [Per *J*. Bocobo, First Division]; *Sumira vs. Vistan*, 74 Phil. 138 (1943) [Per *J*. Moran, First Division]; *Palma vs. Cristobal*, 77 Phil. 712 (1946) [Per *J.* Perfecto, *En Banc*].

The reason for this rule is to prevent the unjust deprivation of rights over real property. As discussed in *People v. Cainglet*:[165]

> It is fundamental and well-settled that a final judgment in a cadastral proceeding — a proceeding *in rem* — is binding and conclusive upon the whole world. Reason is that public policy and public order demand not only that litigations must terminate at some definite point but also that titles over lands under the Torrens system should be given stability for on it greatly depends the stability of the country's economy. *Interest republicae ut sit finis litium. However,* ***this conclusiveness of judgment in the registration of lands is not absolute.*** *It admits of exception. Public policy also dictates that those unjustly deprived of their rights over real property by reason of the operation of our registration laws be afforded remedies. Thus, the aggrieved party may file a suit for reconveyance of property* or a personal action for recovery of damages against the party who registered his property through fraud, or in case of insolvency of the party who procured the registration through fraud, an action against the Treasurer of the Philippines for recovery of damages from the Assurance Fund. *Through these remedial proceedings, the law, while holding registered titles indefeasible, allows redress calculated to prevent one from enriching himself at the expense of other. Necessarily, without setting aside the decree of title, the issues raised in the previous registration case are* ***relitigated****, for purposes of reconveyance of said title or recovery of damages.*[166] (Citations omitted, emphasis supplied)

In this case, the Spouses Po allege that the registration was done through fraud. They contend that they were unaware and were thus unable to contest the registration and prove their claim over the property. Aside from several tax receipts, the Spouses Po formally offered as evidence, among others, the Deed of Sale executed by Mariano in Ciriaco's favor, the Deed of Absolute Sale executed by Ciriaco in their favor, and the Tax Declaration under Victoria's name. Additionally, they also submitted their Memorandum of Agreement with Ciriaco and the Quitclaim executed by Ciriaco in favor of the Spouses Aboitiz.[167] These documents were not considered by the land

---

[165] 123 Phil. 568 (1966) [Per *J*.P. Bengzon, *En Banc*].

[166] *Id*. at 573-574.

[167] *Rollo* (G.R. No. 208450), pp. 99–100.

registration court when it issued the title in favor of the Spouses Aboitiz. The Spouses Po also offered the Application of Original Registration of Title of the Spouses Aboitiz to prove that the Spouses Aboitiz only submitted to the land registration court the cancelled tax declarations of Ciriaco, instead of the tax declaration of the Spouses Po.[168]

Thus, the ruling of the land registration court cannot be so conclusive as to deny the Spouses Po the remedy afforded to them by law. The action for reconveyance allows them to prove their ownership over the property. Hence, they are not precluded from presenting evidence that is contrary to the findings in the land registration case.

The factual findings of the land registration court are not being questioned. An action for reconveyance based on an implied trust seeks to compel the registered owner to transfer the property to its true owner.[169] In *Hortizuela v. Tagufa*:[170]

> [A]n action for reconveyance is a recognized remedy, an action *in personam*, available to a person whose property has been wrongfully registered under the Torrens system in another's name. In an action for reconveyance, the decree is not sought to be set aside. *It does not seek to set aside the decree but, respecting it as incontrovertible and no longer open to review, seeks to transfer or reconvey the land from the registered owner to the rightful owner*. Reconveyance is always available as long as the property has not passed to an innocent third person for value.

There is no quibble that a certificate of title, like in the case at bench, can only be questioned through a direct proceeding. The MCTC and the CA, however, failed to take into account that in a complaint for reconveyance, the decree of registration is respected as incontrovertible and is not being questioned. What is being sought is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to the one with a better

---

[168] *Id*. at 102.

[169] *Hortizuela v. Tagufa,*754 Phil. 499, 512 (2015) [Per *J.* Mendoza, Second Division].

[170] 754 Phil. 499 (2015) [Per *J*. Mendoza, Second Division].

right. If the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee, and the real owner is entitled to file an action for reconveyance of the property.[171] (Citations omitted, emphasis supplied)

Likewise in *Naval v. Court of Appeals*:[172]

Ownership is different from a certificate of title. The fact that petitioner was able to secure a title in her name did not operate to vest ownership upon her of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.

As correctly held by the Court of Appeals, notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. *The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible*. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.[173] (Citations omitted, emphasis supplied)

The rationale for allowing reconveyance despite the finality of the registration is that the issuance of a certificate of title does not create or vest ownership to a person over the property.[174]

---

[171] *Id*. at 507-508.

[172] 518 Phil. 271 (2006) [Per *J*. Ynares-Santiago, First Division].

[173] *Id*. at 282–283.

[174] *Wee v. Mardo,* 735 Phil. 420, 433 (2014) [Per *J.* Mendoza, Third Division].

Registration under the Torrens system "is not a mode of acquiring ownership."[175] A certificate is only a proof of ownership.[176] Thus, its issuance does not foreclose the possibility of having a different owner, and it cannot be used against the true owner as a shield for fraud.[177]

In an action for reconveyance, the parties are obliged to prove their ownership over the property. Necessarily, the parties may present evidence to support their claims. The court must weigh these pieces of evidence and decide who between the parties the true owner is. Therefore, it cannot be bound simply by the factual findings of the land registration court alone.

An exception to this rule is if the party claiming ownership has already had the opportunity to prove his or her claim in the land registration case.[178] In such a case, *res judicata* will then apply.[179] When an issue of ownership has been raised in the land registration proceedings where the adverse party was given full opportunity to present his or her claim, the findings in the land registration case will constitute a bar from any other claim of the adverse party on the property.[180]

However, this is not the circumstance in the case at bar. The Spouses Po were not able to prove their claim in the registration proceedings. Thus, *res judicata* cannot apply to their action for reconveyance.

V

The Spouses Aboitiz posit that the Deed of Absolute Sale between Ciriaco and the Spouses Po is fake and fraudulent.[181]

---

[175] *Id*.

[176] *Id*.

[177] *Id*.

[178] *Abes v. Rodil,* 124 Phil. 243, 248 (1966) [Per *J*. Sanchez, *En Banc*].

[179] *Id.*

[180] *Id.*

[181] *Rollo* (G.R. No. 208450), p. 32, Petition for Review.

They argue that this is evidenced by certifications of the document's non-existence in the notarial books and the Spouses Po's failure to enforce their rights over the property until 18 years later.[182] They also claim that the Deed of Absolute Sale is inadmissible as no documentary stamp was paid and affixed.[183]

This Court notes that the Spouses Aboitiz are raising questions of fact which are not within the scope of a review on certiorari under Rule 45 of the Rules of Court.[184] An appeal under Rule 45 must raise only questions of law, unless the factual findings are not supported by evidence or the judgment is based on a misapprehension of facts.[185] Absent these exceptions, the factual findings of the lower courts are accorded respect and are beyond the review of this Court.[186]

The Spouses Aboitiz failed to prove that these exceptions exist in the case at bar. The Regional Trial Court lent credence to documents presented by the Spouses Po, Peter's testimony about Mariano's sale of the property to Ciriaco,[187] Ciriaco's sale of the property to the Spouses Po, and the issuance of a Tax Declaration in the name of Victoria.[188]

During trial, Peter also testified that after they bought the land, they had a caretaker who cultivated the property by planting

---

[182] *Id.*

[183] *Id.*

[184] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 255-257 (2007) [Per *J.* Chico-Nazario, Third Division], citing *Philippine Airlines, Inc. v. Court of Appeals*, 341 Phil. 624 (1997) [Per *J.* Regalado, Second Division].

[185] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 255-257 (2007) [Per *J.* Chico-Nazario, Third Division], citing *Philippine Airlines, Inc. v. Court of Appeals*, 341 Phil. 624 (1997) [Per *J.* Regalado, Second Division].

[186] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 255-257 (2007) [Per *J.* Chico-Nazario, Third Division], citing *Philippine Airlines, Inc. v. Court of Appeals*, 274 Phil. 624 (1997) [Per *J.* Regalado, Second Division].

[187] *Rollo* (G.R. No. 208497), p. 70.

[188] *Id.* at 71.

fruit trees.[189] He claimed that when they subsequently discovered the quitclaim executed by Ciriaco in favor of the Spouses Aboitiz, they executed a Memorandum of Agreement to protect their interests in the property.[190] He stated that they filed a complaint in the barangay when the Spouses Aboitiz started cutting down their improvements and that they subsequently discovered that Ciriaco was forced by the Mariano Heirs to sell the property to the Spouses Aboitiz.[191]

The Spouses Aboitiz presented as their first witness Armando Avenido, who testified according to the records only.[192] He claimed that he was familiar with the land which was being developed by Aboitiz Land. He testified that Roberto acquired the land through separate Deeds of Sale from the Mariano Heirs, had the tax declaration transferred in his name, paid the taxes on the property, applied for the property's registration, and developed the property into a subdivision.[193] During cross-examination it was revealed that the tax declaration of the Spouses Po was issued before the tax declaration of the Spouses Aboitiz and that the Spouses Po acquired from Ciriaco the entire land, while the Spouses Aboitiz purchased only one-fifth (1/5) of the property.[194]

The Spouses Aboitiz's second witness, Bienvenido Escoton, testified that he was a mason working in the subdivision on the road lot and that he knew no person claiming ownership of the land since 1989.[195]

The Regional Trial Court thus held:

---

[189] *Id*. at 66.

[190] *Id.*

[191] *Id*.

[192] *Id.* at 67.

[193] *Id.*

[194] *Id.* at 68.

[195] *Id.*

Analyzing the adduced and admitted evidence of both parties, Art. 1544 of the Civil Code cannot be aptly applied in the case at bar, for reason that only the sale of Ciriaco Seno (Exh. "A" Exh. A/ 1" Exh. 2"/ A, A-1 and A-2) has the validating elements of sale, whereas the rest of the Deeds of Sale (Exhs 1 to 5) executed by the Heirs of Mariano Seno in favor of the Defendants are void, for containing untruthful statements as pleaded and proven. They are no longer the owners of the subject property when they executed the several Deeds of Conveyance to defendant Roberto Aboitiz.

On the first issue on the identity and location of the land, the sale of Ciriaco Seno to Plaintiffs (Exh. "A") reflected in the Tax Declarations that the Defendants used in their titling proceeding is the very same lot as certified by the Barangay Captain dated July 28, 1999 under Plaintiff's Request for Admission.

Concerning the second formulated issue, only the Deed of Sale executed by Ciriaco Seno was valid with all the attending requisites of sale. It was sold by the legitimate owner of the land, Ciriaco Seno to the Plaintiffs. The sale (Exh. A, Exhibit "X") enjoyed preferential date of execution, being dated or executed in 1978 by the lawful owner Ciriaco Seno who was first to register the sale in the Registry of Property office, and due to such registration, the Tax Declaration of Ciriaco Seno, was cancelled and a new Tax Declaration was issued in the name of Victoria Po for as shown in Exh. E the said tax declaration succeeded in canceling the Tax Declaration of Mariano Seno (Exh. C) and was issued thereafter a Tax Declaration in the name of C[i]riaco Seno (Exh. D). So, when the latter sold the subject 1and to plaintiffs in 1978, the same was already owned by C[i]riaco Seno.

When Mariano Seno died in 1982, the subject land owned by C[i]riaco Seno, naturally, is not part of the estate of Mariano Seno, for at that point in time, the subject land is now owned by plaintiffs Sps. Po, and the same was declared in their names (Exh. "D" "E" & "E-1").

As to the issue whether defendant Roberto Aboitiz was a purchaser in good faith and for value, the Court holds that defendant Roberto Aboitiz was not a purchaser in good faith and for value for he was already informed of the ownership of plaintiffs over the subject land during the conciliation proceedings before the barangay official when plaintiffs filed a barangay case against him.

. . . .

In this case, the Court believes that defendant Roberto Aboitiz is aware of the proprietary rights of the plaintiffs considering the land was already declared for taxation purposes in plaintiffs' names after the tax declaration of said land, first in the name of Mariano Seno was cancelled and another one issued in the name of C[i]riaco Seno when the latter bought the said land from his father Mariano Seno, and after the said tax declaration in the name of C[i]riaco Seno was cancelled and another one issued in the name of plaintiffs herein.

So, defendant Roberto Aboitiz purchased the subject land from the Heirs of Mariano Seno who are no longer the owners thereof and the tax declaration of subject land was no longer in the name of Mariano Seno nor in the name of Heirs of Mariano Seno.

The City Assessor of Mandaue City even issued a Certification (Exh. X) to the effect that Tax Declaration No. 0634-A in the name of Mrs. Victoria Lee Po married to Peter Po was issued prior to the issuance of T.D. No. 1100 in the name of Roberto Aboitiz married to Maria Cristina Cabarruz.

Buyers of any untitled parcel of land for that matter, to protect their interest, will first verify from the Assessor's Office that status of said land whether it has clean title or not.[196]

With the exception of its ruling regarding respondents Jose, Ernesto, and Isabel being purchasers in good faith, these factual findings were affirmed by the Court of Appeals.

Thus, there is no showing that the factual findings are not supported by evidence or that the judgment seems to be based on a misapprehension of facts. Therefore, the factual findings of the lower courts are binding.

Furthermore, this Court finds that the Spouses Aboitiz failed to prove their claim of fraud. The Spouses Aboitiz attempted to prove that the Deed of Absolute Sale between Ciriaco and the Spouses Po was fake and fraudulent by presenting certifications of its non-existence in the notarial books of the notary public who notarized the document.[197]

---

[196] *Id.* at 69-71.

[197] *Rollo,* (G.R. No. 208450), p. 17.

However, a review of the certifications does not even state that the document does not exist in the notarial books.

The Certification dated April 1, 1997 of the Records Management and Archives Office of the Department of Education, Culture and Sports states:

> This is to certify that per records of this Office, Deed of Sale executed by and between Ciriaco Seno and Victoria Lee known as Doc. No. 66; Page No. 14; Book No. I; Series of 1978 entered in the Notarial Register of Notary Public Jesus Pono is not among the documents transferred by the Regional Trial Court of Cebu for safekeeping.[198]

Likewise, the Certification dated April 4, 1997 of the Office of the Clerk of Court of the Regional Trial Court of Cebu, 7th Judicial Region, Cebu City provides:

> This is to certify that as per notarial records on file with this office, available and found as of this date, Atty. Jesus M. Pono had been issued a Notarial Commission for the term 1978-1979.
>
> It is further certifie[d] that *said Notary Public has not submitted his notarial reports for the year 1978-1979* in this office wherein the Deed of Sale as stated on the letter dated March 31, 1997 designated as Doc. no. 66; Page no. 14; Book no. I and Series of 1978 is allegedly included.[199] (Emphasis supplied)

These Certifications do not declare that the Deed of Absolute Sale does not exist. They only state that at the time of their issuance, the Notary Public had not submitted his notarial reports or that the document had not been transferred to the archives for safekeeping. It cannot logically be concluded from these certifications that the document is inexistent, false, or fraudulent.

In any case, the Notary Public's failure to submit his or her notarial report does not affect the act of notarization.[200]

---

[198] *Id.* at 92.

[199] *Id.* at 93.

[200] *Destreza v. Riñoza-Plazo,* 619 Phil. 775, 782-783 (2009) [Per *J.* Abad, Second Division].

Rule 132, Section 30 of the Rules of Court provides that:

> Section 30. Proof of notarial documents. — Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved.

When a private document is notarized, the document is converted to a public document which is presumed regular, admissible in evidence without need for proof of its authenticity and due execution, and entitled to full faith and credit upon its face. [201]

To overturn the presumption in favor of a notarized document, the party questioning it must present "clear, convincing, and more than merely preponderant evidence."[202]

Thus, parties who appear before a Notary Public should not be prejudiced by the failure of the Notary Public to follow rules imposed by the Notarial Law.[203] They are not obliged to ensure that the Notary Public submits his or her notarial reports. [204]

The Spouses Aboitiz failed to present clear and convincing evidence to overturn the presumption. The notarized Deed of Absolute Sale between Ciriaco and the Spouses Po is, thus, presumed regular and authentic.

Consequently, this Court can affirm the finding that the property was sold to Ciriaco in 1973, and that Ciriaco, as the owner of the property, had the right to sell it to the Spouses

---

[201] *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon,* G.R. No. 193117, November 26, 2014, 743 SCRA 16, 24 [Per *J.* Villarama, Third Division].

[202] *Id.*

[203] *Destreza v. Riñoza-Plazo,* 619 Phil. 775, 782-783 (2009) [Per *J.* Abad, Second Division].

[204] *Id.*

Po. Hence, the lot did not form part of the estate of Mariano, and the Mariano Heirs did not have the capacity to sell the property to the Spouses Aboitiz later on.

VI

The Spouses Aboitiz argue that the Mariano Heirs are indispensable parties who should have been impleaded in this case.[205]

The Mariano Heirs are not indispensable parties.

Rule 3, Section 7 of the Revised Rules of Court provides:

> Section 7. Compulsory Joinder of Indispensable Parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

An indispensable party is the party whose legal presence in the proceeding is so necessary that "the action cannot be finally determined" without him or her because his or her interests in the matter and in the relief "are so bound up with that of the other parties."[206]

The property owners against whom the action for reconveyance is filed are indispensable parties.[207] No relief can be had, and the court cannot render a valid judgment, without them.[208] The property has been sold to respondents Jose, Ernesto, and Isabel.[209] Thus, they are indispensable parties.

---

[205] *Rollo* (G.R. No. 208450), p. 34.

[206] *Lozano v. Ballesteros,* 273 Phil. 43, 54 (1991) citing *Co v. Intermediate Appellate Court*, 245 Phil. 347 (1988) [Per *J.* Cruz, First Division].

[207] *Id*. citing *Acting Registrars of Land Titles and Deeds of Pasay City, Pasig and Makati v. Regional Trial Court of Makati, Branch 57*, 263 Phil. 568 (1990) [Per *J.* Sarmiento, *En Banc*].

[208] *Id.*

[209] *Id*.

However, the seller of the property is not an indispensable party.[210] In *Spring Homes Subdivision Co., Inc. v. Spouses Tablada, Jr.*:[211]

> Similarly, by virtue of the second Deed of Absolute Sale between Spring Homes and the Spouses Lumbres, the Spouses Lumbres became the absolute and registered owner of the subject property herein. As such, they possess that certain interest in the property without which, the courts cannot proceed for settled is the doctrine that registered owners of parcels of land whose title is sought to be nullified should be impleaded as an indispensable party. *Spring Homes, however, which has already sold its interests in the subject land, is no longer regarded as an indispensable party, but is, at best, considered to be a necessary party whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in its absence without affecting it. This is because when Spring Homes sold the property in question to the Spouses Lumbres, it practically transferred all its interests therein to the said Spouses.* In fact, a new title was already issued in the names of the Spouses Lumbres. *As such, Spring Homes no longer stands to be directly benefited or injured by the judgment in the instant suit regardless of whether the new title registered in the names of the Spouses Lumbres is cancelled in favor of the Spouses Tablada or not. Thus, contrary to the ruling of the RTC, the failure to summon Spring Homes does not deprive it of jurisdiction over the instant case for Spring Homes is not an indispensable party.*[212] (Citations omitted, emphasis supplied).

The Mariano Heirs, as the alleged sellers of the property, are not indispensable parties. They are at best necessary parties, which are covered by Rule 3, Section 8 of the Rules of Court:

---

[210] *Spring Homes Subdivision Co., Inc. v. Spouses Tablada, Jr.,* G.R. No. 200009, January 23, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/200009.pdf> 8-9 [Per *J.* Peralta, Second Division].

[211] G.R. No. 200009, January 23, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/200009.pdf>[Per *J.* Peralta, Second Division].

[212] *Id*. at 10-11.

Section 8. Necessary Party. — A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

Necessary parties may be joined in the case "to adjudicate the whole controversy," but the case may go on without them because a judgment may be rendered without any effect on their rights and interests. [213]

The Mariano Heirs may likewise be considered material witnesses to the action. A material matter to which a witness can testify on can be a "main fact which was the subject of the inquiry" or any circumstance or fact "which tends to prove" the fact subject of the inquiry, "which tends to corroborate or strengthen the testimony relative to such inquiry," and "which legitimately affects the credit of any witness who testifies."[214]

The validity of the Deeds of Sale allegedly executed by the parties in this case is a material matter in determining who the true owner of the property is. Thus, the Mariano Heirs, including Ciriaco, may testify as to the Deeds of Sale they executed to prove which sale is the valid one.

However, it is clear that the Mariano Heirs are not indispensable parties. They have already sold all their interests in the property to the Spouses Aboitiz. They will no longer be affected, benefited, or injured by any ruling of this Court on the matter, whether it grants or denies the complaint for reconveyance. The ruling of this Court as to whether the Spouses Po are entitled to reconveyance will not affect their rights. Their interest has, thus, become separable from that of Jose, Ernesto, and Isabel.

Thus, the Court of Appeals correctly ruled that the Mariano Heirs are not indispensable parties.

---

[213] *Seno v. Mangubat,* 240 Phil. 121, 131 (1987) [Per *J.* Gancayco, First Division].

[214] *U.S. v. Ballena,* 18 Phil. 382, 385 (1911) [Per *J.* Trent, *En Banc*].

VII

Despite these findings, the Spouses Po cannot recover the property. Respondents Jose, Ernesto, and Isabel are innocent purchasers for value.

An innocent purchaser for value refers to the buyer of the property who pays for its full and fair price without or before notice of another person's right or interest in it.[215] He or she buys the property believing that "the [seller] [i]s the owner and could [transfer] the title to the property."[216]

The Spouses Po argue that respondents Jose, Ernesto, and Isabel are not innocent purchasers for value because the tax declaration over the property has the following annotation:

> This tax declaration is also declared in the name of Mrs. Victoria Lee Po, married to Peter Po under tax dec. no. 0634-A so that one may be considered a duplicate to the other.

However, if a property is registered, the buyer of a parcel of land is not obliged to look beyond the transfer certificate of title to be considered a purchaser in good faith for value.[217]

Section 44 of Presidential Decree No. 1529[218] states:

> Section 44. *Statutory liens affecting title.* — Every registered owner receiving a certificate of title in pursuance of a decree of registration, and *every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate* and any of the following encumbrances which may be subsisting, namely:

---

[215] *Leong v. See,* G.R. No. 194077, December 3, 2014, 743 SCRA 677, 687 [Per *J.* Leonen, Second Division].

[216] *Sandoval v. Court of Appeals,* 329 Phil. 48, 62 (1996) [Per *J.* Romero, Second Division].

[217] *Leong v. See,* G.R. No. 194077, December 3, 2014, 743 SCRA 677, 688 [Per *J.* Leonen, Second Division].

[218] Property Registration Decree (1978).

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record.

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.

Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform. (Emphasis supplied)

In *Cruz v. Court of Appeals:*[219]

The real purpose of the Torrens system of registration is to quiet title to land and to put a stop to any question of legality of the title except claims which have been recorded in the certificate of title at the time of registration or which may arise subsequent thereto. Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate. Hence, a purchaser is not required to explore further what the Torrens title on its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto.

Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the

---

[219] 346 Phil. 506 (1997) [Per *J.* Bellosillo, First Division].

law. Every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go behind the certificate to determine the condition of the property. Even if a decree in a registration proceeding is infected with nullity, still an innocent purchaser for value relying on a Torrens title issued in pursuance thereof is protected.[220]

The rationale for this rule is the public's interest in sustaining "the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance" on it.[221] In *Leong v. See*:[222]

The Torrens system was adopted to "obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further."

One need not inquire beyond the four corners of the certificate of title when dealing with registered property. . .

. . . .

The protection of innocent purchasers in good faith for value grounds on the social interest embedded in the legal concept granting indefeasibility of titles. Between the third party and the owner, the latter would be more familiar with the history and status of the titled property. Consequently, an owner would incur less costs to discover alleged invalidities relating to the property compared to a third party. Such costs are, thus, better borne by the owner to mitigate costs for the economy, lessen delays in transactions, and achieve a less optimal welfare level for the entire society.[223] (Citations omitted)

---

[220] *Id*. at 511-512.

[221] *Claudio v. Spouses Saraza*, G.R. No. 213286, August 26, 2015, 768 SCRA 356, 365 [Per *J*. Mendoza, Second Division], citing *Cavite Development Bank vs. Lim*, 381 Phil. 355 (2000) [Per *J*. Mendoza, Second Division].

[222] G.R. No. 194077, December 3, 2014, 743 SCRA 677, 687 [Per *J*. Leonen, Second Division].

[223] *Id*. at 686-688.

Thus, respondents were not obliged to look beyond the title before they purchased the property. They may rely solely on the face of the title.

The only exception to the rule is when the purchaser has actual knowledge of any defect or other circumstance that would cause "a reasonably cautious man" to inquire into the title of the seller.[224] If there is anything which arouses suspicion, the vendee is obliged to investigate beyond the face of the title.[225] Otherwise, the vendee cannot be deemed a purchaser in good faith entitled to protection under the law.[226]

In this case, there is no showing that respondents Jose, Ernesto, and Isabel had any knowledge of the defect in the title. Considering that the annotation that the Spouses Po are invoking is found in the tax declaration and not in the title of the property, respondents Jose, Ernesto, and Isabel cannot be deemed purchasers in bad faith.

WHEREFORE, the Court of Appeals' October 31, 2012 Decision[227] and its June 17, 2013 Resolution[228] in CA-G.R. CV No. 03803 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

---

[224] *Sandoval v. Court of Appeals,* 329 Phil. 48, 60 (1996) [Per *J.* Romero, Second Division].

[225] *Id*.

[226] *Id.*

[227] *Rollo* (G.R. No. 208450), pp. 42-57.

[228] *Id.* at 60-61.

SECOND DIVISION

[G.R. No. 209132. June 5, 2017]

HEIRS OF TERESITA VILLANUEVA, substituted by her legal heirs, namely: ELSA ANA VILLANUEVA, LEONILA VILLANUEVA, TERESITA VILLANUEVA-SIPIN, FERDINAND VILLANUEVA, and MARISSA VILLANUEVA-MADRIAGA, *petitioners, vs.* **HEIRS OF PETRONILA SYQUIA MENDOZA, represented by MILAGROS PACIS, and the co-heirs of PETRONILA SYQUIA-MENDOZA, namely, TOMAS S. QUIRINO, represented by SOCORRO QUIRINO, VICTORIA Q. DEGADO, CESAR SYQUIA, JUAN J. SYQUIA, represented by CARLOTA (NENITA) C. SYQUIA, and HECTOR SYQUIA, JR., acting through their Attorney-in-fact CARLOS C. SYQUIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULE 45 PETITION; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS.—** It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law. x x x The rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record.

2. **ID.; ID.; ID.; QUESTION OF LAW, EXPLAINED; TEST TO DETERMINE WHETHER A QUESTION IS ONE OF LAW OR OF FACT.—** A petition for review under Rule 45 should only cover questions of law since questions of fact are generally not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts while a question of fact results when the issue revolves around the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must solely depend on what the law provides on the given set of circumstances. Once it is obvious that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

3. **CIVIL LAW; LAND REGISTRATION; RECONVEYANCE; TWO THINGS THAT MUST BE PROVED FOR RECONVEYANCE OF LAND TO PROSPER; CLAIMANTS FAILED TO ESTABLISH THE IDENTITY OF THE LAND IN CASE AT BAR.—** Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims of having a better right to it must prove two (2) things: *first*, the identity of the land claimed and *second*, his title to the same. x x x [T]he heirs of Syquia failed to adequately prove that the area of their property in the tax declaration coincides with the area of either Lot 5667-B which is 4,497 square meters or Lot 5667 which is 9,483 square meters. They likewise failed to show, based on the boundaries, that the lot they claim to have inherited is actually either Lot 5667-B, the property in dispute, or Lot 5667, the cadastral survey of which lists the Syquias as claimants. Certainly, the Syquias were not able to identify their land with that degree of certainty required to support their affirmative allegation of ownership.

4. **ID.; ID.; ID.; ID.; CLAIMANTS LIKEWISE FAILED TO PROVE THEIR TITLE TO THE LAND IN DISPUTE; TAX**

DECLARATIONS AND RECEIPTS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP OR OF THE RIGHT TO POSSESS A LAND.— [A]side from the tax declarations covering an unirrigated riceland in Tamag, Vigan, the Syquia heirs failed to present any other proof of either ownership or actual possession of the lot in question, or even a mere indication that they exercised any act of dominion over the property. In fact, they were not able to show that they have been in actual possession of the property since they allegedly inherited the same in 1992. The Syquias' own evidence would reveal that several houses have been constructed on the lot and third persons have actually been occupying the subject property, despite the presence of their supposed caretaker. Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess a land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily amount to ownership. These are merely *indicia* of a claim of ownership.

5. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT AS TO THE CREDIBILITY OF WITNESSES ACCORDED THE HIGHEST RESPECT.—** The Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of the witnesses on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. It is established that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness's credibility, and the trial court has the best opportunity to take advantage of the same. Said aids, unfortunately, cannot be incorporated in the records. Therefore, all that is left for the appellate courts to utilize are the cold words of the witnesses contained in a transcript, with the risk that some of what the

witnesses actually said may have been lost in the process of transcribing. As stated by an American court, there is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed, in the very nature of things, cannot be transcribed upon the record, and hence, they can never be appreciated and considered by the appellate courts.

APPEARANCES OF COUNSEL

Leila Carolina A. Vizcarra for petitioners.
Gonzalez Batiller Leabres & Reyes for respondents.

D E C I S I O N

PERALTA, *J*.:

This is an appeal from the Amended Decision[1] of the Court of Appeals (*CA*) dated August 29, 2013 in CA-G.R. CV No. 88873, which reversed and set aside its original Decision[2] promulgated on November 29, 2011.

The factual and procedural antecedents, as culled from the records of the case, are as follows:

The case at bar resulted from a dispute between the heirs of Petronila Syquia Mendoza and the heirs of Teresita Villanueva over a lot in Tamag, Vigan, Ilocos Sur.

On September 7, 2001, the heirs of Syquia filed a Complaint for declaration of nullity of free patent, reconveyance, and

---

[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario; concurring; *rollo*, pp. 24-39.

[2] *Id*. at 74-104.

damages against Teresita Villanueva (*Villanueva*). They claimed that they are co-owners of Lot No. 5667 in Tamag, Vigan City, supposedly with an area of around 5,913 square meters. They likewise alleged that their title originated from their predecessors-in-interest, Gregorio and Concepcion Syquia, through a partition in 1950, and that they have been in open, peaceful, and uninterrupted possession of said parcel of land in the concept of an owner for more than thirty (30) years. However, sometime in 1992, Villanueva caused the survey and subdivision of the property into Lot Nos. 5667-A and 5667-B. Then in 1994, Villanueva obtained a Free Patent over Lot No. 5667-B and later, was issued Original Certificate of Title (*OCT*) No. P-38444.

The heirs of Syquia asserted that Villanueva had no registrable right over Lot No. 5667-B and that she obtained the free patent through fraud and misrepresentation.

On December 14, 2006, the Regional Trial Court (*RTC*) of Vigan City, Ilocos Sur in Civil Case No. 5649-V dismissed the abovementioned complaint, the decretal portion of which states:

> WHEREFORE**,** for failure of the plaintiffs to prove their cause of action by preponderant evidence and/or, for being barred by laches, judgment is hereby rendered DISMISSING the Complaint in favor of substituted defendant heirs of Teresita C. Villanueva, namely: Elsa Ana Villanueva, Leonila Villanueva, Teresita Villanueva-Sipin, Ferdinand Villanueva and Marissa Villanueva-Madriaga.
>
> The Complaint against defendants Provincial Environment and Natural Resources Officer (PENRO) and the Register of Deeds of Ilocos Sur is also DISMISSED.
>
> Further, for lack of proof, the Counterclaim is likewise DISMISSED.
>
> The Register of Deeds of Ilocos Sur is ordered to cancel the Notice of *Lis Pendens* dated September 7, 2001 annotated on Transfer Certificate of Title Nos. T-37973, T-37974, T-38278, T-38279, T-38280, T-38281, T-38282 and T-38283, all in the name of Teresita C. Villanueva.
>
> There is no pronouncement as to costs.

SO ORDERED.[3]

Undeterred, the heirs of Syquia elevated the case to the CA. On November 29, 2011, the appellate court denied the appeal and affirmed the December 14, 2006 RTC Decision.

Consequently, the heirs of Syquia filed a Motion for Reconsideration. And, on August 29, 2013, they finally obtained a favorable decision when the CA reversed itself and ruled against the heirs of Villanueva, to wit:

> **WHEREFORE**, premises considered, the Decision promulgated on November 29, 2011 is **RECONSIDERED** and **SET ASIDE**, and another one **PROMULGATED** as follows:
>
> 1. Declaring the Free Patent, OCT No. 38444, issued in the name of defendant-appellee Teresita C. Villanueva, and all other derivative titles issued therefrom, null and void ab initio;
> 2. Ordering the Register of Deeds of Ilocos Sur, Vigan City Station to cancel Transfer Certificates of Title No. T-37973, T-37974, T-37976, T-37977, T-38277, T-38278, T-38279, T-38280, T-38281, T-38282 and T-38283, issued in the name of defendant-appellee Teresita C. Villanueva, and all other derivative titles issued therefrom; and
> 3. Ordering defendants-appellees to pay the costs of suit.
>
> **SO ORDERED**.[4]

Hence, the present petition.

The sole issue in this case is whether or not the heirs of Syquia are entitled to validly recover the subject property from the heirs of Villanueva.

The Court rules in the negative.

It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to

---

[3] *Rollo*, pp. 72-73.

[4] *Id*. at 39. (Emphasis in the original)

reviewing errors of law that may have been committed by the lower courts. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts. To do otherwise would defeat the very essence of Rule 45 and would convert the Court into a trier of facts, which is not its intended purpose under the law. Here, the issue is essentially factual in nature, the determination of which is best left to the courts below, especially the trial court.[5]

A petition for review under Rule 45 should only cover questions of law since questions of fact are generally not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts while a question of fact results when the issue revolves around the truth or falsity of the alleged facts.[6] For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must solely depend on what the law provides on the given set of circumstances. Once it is obvious that the issue invites a review of the evidence presented, the question posed is one of fact.[7]

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. And it is only in exceptional circumstances that the Court admits and reviews questions of fact.[8]

The rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on

---

[5] *Gepulle-Garbo v. Spouses Garabato*, G.R. No. 200013, January 14, 2015, 746 SCRA 189, 197.

[6] *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688, 692.

[7] *Century Iron Works, Inc., et al. v. Bañas,* 711 Phil. 576, 586 (2013).

[8] *Id.* at 585.

speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record.[9]

Here, the CA's amended judgment after granting the Syquias' motion for reconsideration is clearly based on a misapprehension of facts. Upon an exhaustive review, the Court is compelled to yield to the findings of fact by the trial court, as affirmed by the CA in its original decision. Here, the heirs of Syquia filed a complaint against the Villanuevas for the reconveyance of the subject property. From the allegations of the complaint itself, there is already serious doubt as to the identity of the land sought to be recovered, both in area as well as in its boundaries. Under Article 434[10] of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims of having a better right to it must prove two (2) things: *first*, the identity of the land claimed and *second*, his title to the same.[11]

While the complaint identified the land as Lot No. 5667, Cad 313-D, Vigan Cadastre located in Tamag, Vigan, Ilocos Sur, it cited Tax Declaration No. 39-013194-A as part of the supporting evidence. Based on the records, however, Lot No. 5667 has an area of 9,483 square meters, while the riceland mentioned in the tax declaration has an area of only 5,931 square meters. As to why the area in the tax declaration had suddenly increased to almost twice its original size, the heirs of Syquia failed to sufficiently justify during the trial. In fact, the trial court wondered why the Syquias never tried to offer an explanation for said substantial discrepancy. But what is more

---

[9] *Uyboco v. People, supra* note 6, at 692-693.

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

[11] *VSD Realty & Development Corporation v. Uniwide Sales, Inc., et al.*, 698 Phil. 62, 78 (2012).

perplexing is the fact that Lot No. 5667-B, the actual property covered by Villanueva's free patent which the heirs of Syquia have been trying to recover, is only 4,497 square meters in area. Thus, the Court is placed in a serious quandary as to what the Syquias are really seeking to recover, the 9,483-square-meter lot in their complaint (the whole of Lot No. 5667), the 5,931-square-meter riceland in their supporting document (tax declaration), or the 4,497-square-meter property covered by the free patent which they are attacking as null and void (Lot No. 5667-B)?

They likewise failed to prove with sufficient definiteness that the boundaries of the property covered by Tax Declaration No. 39-013194-A are the exact same boundaries surrounding Lot No. 5667-B or even those around Lot No. 5667. Lot No. 5667 has the following boundaries:

Lot No. 5663, North
Lot No. 5666, South
Quirino Boulevard, East
Lot No. 6167, West

Lot No. 5667-B has the same aforementioned boundaries, except for the South, which shows Lot No. 5667-A. On the other hand, the tax declaration states the following:

Maria Angco, North
Heirs of Esperanza Florentino, South
Provincial Road, East
Colun Americano, West

The heirs of Syquia never adduced evidence tending to prove that Lot No. 5663 refers to Maria Angco, that Lot No. 5666 or that Lot No. 5667-A pertains to the heirs of Esperanza Florentino, that Quirino Boulevard is Provincial Road, and that Lot No. 6167 is Colun Americano.

The CA, in its Amended Decision, tried to justify its new ruling by explaining that since Lot No. 5667 had already been subdivided into two (2) lots, the boundaries and size of the property, as reflected in the tax declaration, would no longer match the boundaries and size of the lot covered by the free patent, which is Lot No. 5667-B, to wit:

x x x Resultantly, with the subdivision of plaintiffs-appellants' Lot No. 5667 into two (2) lots, the boundaries and area as stated in plaintiffs-appellants' Tax Declaration **would no longer match** with the boundaries and area as stated in the Free Patent No. 38444 subsequently issued in favor of defendant-appellee Villanueva.[12]

What the CA failed to mention, however, was if said boundaries and area in the tax declaration had actually matched those of either Lot No. 5667-B or Lot No. 5667 prior to its subdivision.

The appellate court heavily relied on the following documents which the heirs of Syquia submitted: (a) B.L. Form No. V-37 of Lot No. 5667; (b) the Sketch Plan of Lot No. 5667, Cad 313-D; and (c) the Relocation Plan of Lot No. 5667, all of which the CA found to have adequately established Lot No. 5667's metes and bounds. The Syquias also presented the Final Project of Partition dated June 13, 1950 in the settlement of the estate of Concepcion J. Vda. de Syquia, which mentioned the exact same boundaries of the property in the tax declaration. Based on the same, the CA concluded that "the above-described property in the said Final Project of Partition pertains to plaintiffs-appellants' Lot No. 5667, which is the subject property in this case."[13] But as to how it arrived at said conclusion, despite the blatantly differing boundaries and lot areas, the appellate court was deafeningly silent.

The CA went further and stated that while the tax declaration was issued in 1949, it was only in 1981 when the Cadastral Survey of Tamag, Vigan, Ilocos Sur was approved. In those thirty-two (32) years of interregnum, "it is possible that the names of the boundary owners and metes, pertaining not only to plaintiffs-appellants' Lot No. 5667 but also to other unregistered lots in Tamag, Vigan, Ilocos Sur which were also covered by early tax declarations, would have already changed."[14]

---

[12] *Rollo*, pp. 25-26. (Emphasis ours)

[13] *Id*. at 29.

[14] *Id*. at 26.

While such pronouncement seems logical and reasonable, it remains hypothetical since the same is merely based on mere surmises or conjectures. The harsh truth still stands that the heirs of Syquia failed to justify the substantial disparities in the boundaries and sizes with sufficient evidence. No actual proof was ever offered to show that said possibility had actually turned out to become a reality.

The CA itself stated that" the tax declaration could not be expected to be as accurate, in terms of boundaries and actual area, as compared to those found in the Vigan Cadastral Survey, since the latter was the result of an actual and methodological survey and plotting of all unregistered lands situated in Tamag, Vigan, Ilocos Sur."[15] However, as aptly observed by the RTC, even after the survey, there was no indication that the heirs of Syquia ever tried to have the data in the tax declaration corrected so as to conform with the supposedly more accurate information in the cadastral survey. Neither was there any explanation to warrant the lack of attempt to make said necessary corrections.

To recapitulate, the heirs of Syquia failed to adequately prove that the area of their property in the tax declaration coincides with the area of either Lot 5667-B which is 4,497 square meters or Lot 5667 which is 9,483 square meters. They likewise failed to show, based on the boundaries, that the lot they claim to have inherited is actually either Lot 5667-B, the property in dispute, or Lot 5667, the cadastral survey of which lists the Syquias as claimants. Certainly, the Syquias were not able to identify their land with that degree of certainty required to support their affirmative allegation of ownership.

Simply put, the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law.[16] In civil cases, the burden of proof

---

[15] *Id*. at 27.

[16] *Gepulle-Garbo v. Spouses Garabato, supra* note 5, at 198.

rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[17]

Section 1, Rule 133 of the Rules of Court provides for the quantum of evidence for civil actions, and delineates how preponderance of evidence is determined, *viz.*:

> Section 1. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

As the rule indicates, preponderant evidence refers to evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it. It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence.[18]

In the instant case, aside from the tax declarations covering an unirrigated riceland in Tamag, Vigan, the Syquia heirs failed to present any other proof of either ownership or actual possession of the lot in question, or even a mere indication that they exercised any act of dominion over the property. In fact, they were not able to show that they have been in actual possession of the property since they allegedly inherited the same in 1992. The Syquias' own evidence would reveal that several houses have been constructed on the lot and third persons have actually been occupying the subject property, despite the presence of their supposed caretaker.

---

[17] *Spouses De Leon, et al. v. BPI*, 721 Phil. 839, 848 (2013).

[18] *FEBTC v. Chante*, 719 Phil. 221, 234 (2013).

Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess a land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily amount to ownership. These are merely *indicia* of a claim of ownership.[19]

Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court.[20] The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight.[21]

The Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of the witnesses on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. It is established that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness's credibility, and the trial court has the best opportunity to take advantage of the same. Said aids, unfortunately, cannot be incorporated in the records. Therefore, all that is left for the

---

[19] *Republic v. Manimtim, et al.*, 661 Phil. 158, 174 (2011).

[20] *Uyboco v. People*, *supra* note 6.

[21] *FEBTC v. Chante*, *supra* note 18.

appellate courts to utilize are the cold words of the witnesses contained in a transcript, with the risk that some of what the witnesses actually said may have been lost in the process of transcribing. As stated by an American court, there is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed, in the very nature of things, cannot be transcribed upon the record, and hence, they can never be appreciated and considered by the appellate courts.[22]

Here, based on the evidence presented during the trial, the RTC found nothing that would bare any grave abuse of discretion on the part of the Department of Environment and Natural Resources (*DENR*) when it issued the free patent in Villanueva's favor. The records show that Villanueva submitted, in compliance with the requirements of the DENR, a Waiver of Right by the former owner of the property. Likewise, the Syquias' own evidence, through Imelda Tabil, Land Management Officer of the DENR, established that at the time Villanueva filed her application, the land was investigated upon and there was no other claimant over the lot. As regards the Syquias' apprehension that Villanueva's free patent title was based on a verification survey of another lot rather than of the lot applied for, Engineer Raymundo Gayo, then Officer-in-Charge at the Laoag Community Environment and Natural Resources Office, testified that an applicant may also present a verification survey of the adjacent lot which is already titled as long as an approved technical description would likewise be submitted. Also, the erasures in the technical description would not affect the subject lot since it is the approved survey plan which must prevail in case of erasures.

---

[22] *People v. Abat*, 731 Phil. 304, 312 (2014).

Even assuming, without admitting, that Villanueva's evidence to support her title is weak, the heirs of Syquia could not successfully capitalize on the same. The Court reiterates for emphasis that in an action to recover, the plaintiff must rely on the strength of his title and not harp on the weakness of the defendant's claim.[23] Again, in civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[24] Here, unfortunately for the heirs of Syquia, they miserably failed in discharging the heavy burden required of them.

After a review of the records of the case, the Court finds the totality of evidence submitted by the heirs of Syquia insufficient to establish the crucial facts that would justify a judgment in their favor.[25] Thus, the Court finds no justifiable reason to deviate from the findings and ruling of the trial court.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **GRANTS** the petition, and **REVERSES** and **SETS ASIDE** the Amended Decision of the Court of Appeals dated August 29, 2013 in CA-G.R. CV No. 88873 and **REINSTATES** its original Decision dated November 29, 2011, which affirmed the December 14, 2006 Decision[26] of Regional Trial Court, Branch 21, of Vigan City, Ilocos Sur.

SO ORDERED.

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

Mendoza and *Martires, JJ.,* on official leave.

---

[23] *Supra* note 10.

[24] *De Leon v. BPI*, *supra* note 17.

[25] *FEBTC v. Chante, supra* note 18, at 235.

[26] Penned by Judge Dominador Arquelada; *rollo*, pp. 44-73.

THIRD DIVISION

[G.R. No. 209859. June 5, 2017]

EILEEN P. DAVID, *petitioner, vs.* **GLENDA S. MARQUEZ,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA 8042); AN ILLEGAL RECRUITMENT CASE MAY BE FILED IN THE PLACE WHERE THE OFFENDED PARTY ACTUALLY RESIDES AT THE TIME OF THE COMMISSION OF THE OFFENSE; DISMISSAL OF THE CASE ON A WRONG GROUND CONSTITUTES GRAVE ABUSE OF DISCRETION.—** Sec. 9 of RA 8042, however, fixed an alternative venue from that provided in Section 15(a) of the Rules of Criminal Procedure, *i.e.,* a criminal action arising from illegal recruitment may also be filed where the offended party actually resides at the time of the commission of the offense and that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts. Despite the clear provision of the law, the RTC of Manila declared that it has no jurisdiction to try the cases as the illegal Recruitment and Estafa were not committed in its territory but in Kidapawan City. We are, thus, one with the CA in finding that the RTC of Manila committed grave abuse of discretion and in fact, a palpable error, in ordering the quashal of the Informations. The express provision of the law is clear that the filing of criminal actions arising from illegal recruitment before the RTC of the province or city where the offended party actually resides at the time of the commission of the offense is allowed. It goes without saying that the dismissal of the case on a wrong ground, indeed, deprived the prosecution, as well as the respondent as complainant, of their day in court.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; THE PROSECUTION CANNOT GENERALLY APPEAL A JUDGMENT RENDERED IN FAVOR OF THE ACCUSED IN A CRIMINAL CASE; BUT RESPONDENT, BEING THE**

PRIVATE COMPLAINANT, HAS THE LEGAL PERSONALITY TO FILE A *PETITION FOR CERTIORARI* UNDER RULE 65 TO ASSAIL THE DISMISSAL OF THE CRIMINAL CASE.— There is no question that, generally, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case due to the final and executory nature of a judgment of acquittal and the constitutional prohibition against double jeopardy. Despite acquittal, however, the offended party or the accused may appeal, but only with respect to the civil aspect of the decision. This Court has also entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissal of, criminal cases upon clear showing that the lower court, in acquitting the accused, committed not merely errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void. When the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari,* the right of the accused against double jeopardy is not violated.

3. **ID.; ID.; DOUBLE JEOPARDY; ELEMENTS; DOUBLE JEOPARDY DOES NOT ATTACH WHERE THE DISMISSAL OF THE CRIMINAL CASE WAS GRANTED UPON MOTION OF THE ACCUSED.—** [I]t is elementary that double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent. Thus, as found by the CA, double jeopardy does not attach in this case as the dismissal was granted upon motion of the petitioner. To be sure, no fundamental right of the petitioner was violated in the filing of the petition for *certiorari* before the CA by the respondent, as well as the grant thereof by the CA.

APPEARANCES OF COUNSEL

Jaso Dorillo & Associates for petitioner.
Eduardo E. Francisco for respondent.

DECISION

TIJAM, *J.*:

This is a Petition for Review on Certiorari[1] under Rule 45, assailing the Decision[2] dated May 29, 2013 and Resolution[3]dated November 6, 2013 of the Court of Appears (CA) in CA-G.R. SP No. 124839, reinstating the criminal cases of Illegal Recruitment and Estafa against Petitioner Eileen David.

The Procedural and Factual Antecedents

In a *Sinumpaang Salaysay* filed before the Office of the City Prosecutor of Manila, Respondent Glenda Marquez alleged, among others, that she is a resident of Sampaloc, Manila and that sometime in March 2005, petitioner approached her in Kidapawan City and represented that she could recruit her to work abroad.[4] It was further alleged that petitioner demanded payment of placement fees and other expenses from the respondent for the processing of the latter's application, to which the respondent heeded.[5] Respondent's application was, however, denied and worse, the money that she put out therefor was never returned.[6]

In her Counter-Affidavit and Counter Charge, petitioner averred that it was physically impossible for her to have committed the said acts as she was in Canada at the alleged time of recruitment as evidenced by the entries in her passport.[7]

---

[1] *Rollo,* pp. 3-30 with Annexes.

[2] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Rodil V. Zalameda; *Id*., 31-40.

[3] *Id*., pp. 41-42.

[4] *Supra* note 2, at 32.

[5] *Id.*

[6] *Id*.

[7] *Id.*

Petitioner further averred that she was never engaged in the recruitment business.[8] The petitioner alleged that the amount deposited in her account was not for her but was just coursed through her to be given to her friend in Canada who was the one processing respondent's application, as evidenced by a certification to that effect issued by the said friend.[9] Further, petitioner argued before the Prosecutor that assuming *arguendo* that the allegations of recruitment were true, the case should be filed in Kidapawan City and not in Manila.[10]

On December 9, 2008, two separate Informations were filed against petitioner for Illegal Recruitment and Estafa, respectively. The accusatory portions thereof read as follows:

Criminal Case No. 08-265539

The undersigned accuses EILEEN DAVID of a violation of Article 38 (a), P.D. No. 1412, amending certain provision of Book I, P.D. No. 442, otherwise known as the New Labor Code of the Philippines, in relation to Article 13 (b) and (c) of said code, as further amended by P.D. Nos. 1693, 1920, and 2018 and as further amended by Sec. 6 (a), (1) and (m) of Republic Act 8042, committed as follows:

That sometime in the month of March, 2005, in the City of Manila, Philippines, the said accused representing herself to have the capacity to contract, enlist and transport Filipino workers overseas, particularly in Canada, did then and there willfully, unlawfully, for a fee, recruit and promise employment/job placement to GLENDA S. MARQUEZ without first having secured the required license from the Department of Labor and Employment as required by law, and charged or accepted directly or indirectly from said complainant the amount of Php152,670.00 as placement/processing fee in consideration for her overseas employment, which amount is in excess of or greater than that specified in the schedule of allowable fees prescribed by the POEA, and without valid reasons failed to actually deploy her and continuously fail to reimburse expenses incurred by her in connection with her documentation and processing for purposes of her deployment.

---

[8] *Id*.

[9] *Supra* note 1, at 6.

[10] *Supra* note 4.

Contrary to law.[11]

Criminal Case No. 08-265540

The undersigned accuses EILEEN P. DAVID of the crime of Estafa, Art. 315 par. 2 (a) of the Revised Penal Code, committed as follows:

That on or about and during the period comprised between March 8, 2005 and April 20, 2007, inclusive, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously defraud GLENDA S. MARQUEZ in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which she made to said GLENDA S. MARQUEZ prior to and even simultaneous with the commission of the fraud, to the effect that she had the power and capacity to recruit and employ said GLENDA S. MARQUEZ for overseas employment in Canada as Live-in Caregiver, and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing the said GLENDA S. MARQUEZ to give and deliver, as in fact she gave and delivered to said accused the total amount of Php152,670.00, on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact, she did obtain the said amount of Php152,670.00, which amount once in her possession, with intent to defraud, misappropriated, misapplied, and converted to her own personal use and benefit, to the damage and prejudice of said GLENDA S. MARQUEZ in the aforesaid amount of Php152,670.00, Philippine Currency.

Contrary to law.[12]

The Ruling of the Regional Trial Court

On December 11, 2008, warrants of arrest were issued against the petitioner.

On April 15, 2009, petitioner filed a Motion to Quash the Information[13] in Criminal Case No. 08-265540, arguing that she was deprived of her right to seek reconsideration or

---

[11] *Rollo,* pp. 71-72.

[12] *Id.*, p. 73.

[13] *Id.*, pp. 74-87.

reinvestigation of the public prosecutor's resolution as she was not furnished a copy thereof.[14] Also, petitioner argued that the. City Prosecutor of Manila had no jurisdiction over the case as the alleged crime was committed in Kidapawan City.

In an Order[15] dated May 13, 2011 in Criminal Case No. 08-265540, the Regional Trial Court (RTC) of Manila, Branch 55, denied petitioner's Motion to Quash, ruling that the ground relied upon by the petitioner in the said motion is not one of those enumerated under Section 3[16], Rule 117 of the Rules of Court for quashing a complaint or information.[17] As to the jurisdictional issue, the RTC ruled that it has jurisdiction to take cognizance of the case, citing Section 9 of Republic Act No. 8042[18] (RA 8042), which explicitly states that:

---

[14] RTC of Manila, Branch 55 Order dated May 13, 2011, penned by Judge Armando A. Yanga, *Id*., p. 110.

[15] *Id.*, pp. 110-111.

[16] SEC. 3. *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the officer who filed the information had no authority to do so;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[17] *Supra* note 15.

[18] *The Migrant Workers and Overseas Filipinos Act of 1995.*

A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed **or where the offended party actually resides at the time of the commission of the offense** xxx. *(underscoring supplied for emphasis)*[19]

Since complainant is a resident of Manila, the RTC ruled that the second ground interposed by the petitioner is devoid of merit.[20] Thus:

In view of the foregoing, the Motion to Quash is hereby DENIED for lack of merit.

SO ORDERED.[21]

Petitioner filed a Motion for Reconsideration[22] of the said Order alleging that she just found out that there were two Informations filed against her, one for Illegal Recruitment in Criminal Case No. 08-265539[23] and another for Estafa[24] in Criminal Case No. 08-265540. Petitioner maintained that the alleged crimes were committed in Kidapawan City, not in Manila as alleged in the Informations. Petitioner further alleged that there is no showing that respondent is an actual resident of Manila but as per her Reply-Affidavit, Manila is merely her postal address.[25] Hence, petitioner again raised a jurisdictional issue in the said motion.[26]

In an Order[27] dated January 26, 2012, this time in Criminal Cases Nos. 08-265539-40, the RTC reconsidered its May 13, 2011 Order, finding that it had no jurisdiction to try the cases

---

[19] *Supra* note 15, at 111.

[20] *Id.*

[21] *Id.*

[22] *Rollo*, pp. 112-118.

[23] Not 08-265540 as alleged in the Motion to Quash.

[24] *Supra* note 22, at 112.

[25] *Id.*, p. 114.

[26] *Id*.

[27] *Rollo,* pp. 119-120.

since the crimes of Illegal Recruitment and Estafa were not committed in its territory but in Kidapawan City, thus:

> WHEREFORE, in the light of the foregoing, the instant Motion for Reconsideration is hereby GRANTED. The Order of this Court dated May 13, 2011 is hereby RECONSIDERED and SET ASIDE.
>
> This case is ordered returned to the Office of the Clerk of Court of the Regional Trial Court for proper disposition.
>
> SO ORDERED.[28]

On the same date, the RTC also issued an Order[29] recalling the warrants of arrest issued against the petitioner, thus:

> Considering that this Court has no territorial jurisdiction over the above-entitled cases, the Order of this Court dated December 11, 2008, pertaining to the issuance of Warrants of Arrest against herein accused is hereby cancelled (and) set aside.
>
> WHEREFORE, let the Warrants of Arrest issued in these cases be ordered RECALLED AND SET ASIDE.
>
> SO ORDERED.[30]

Respondent, through the public prosecutor, then filed a Motion for Reconsideration[31] of the said Order, averring that while it appears in the Philippine Overseas Employment Administration (POEA) pro-forma complaint affidavit that the alleged recruitment activities took place in Kidapawan City, it also appears in her Reply-Affidavit, that she deposited certain amounts in several banks in Manila for the name and account of petitioner as payments for employment processing and placement fees.[32] Thus, part of the essential elements of Illegal Recruitment and Estafa took place in Manila.[33] Section 9 of RA 8042, above-

---

[28] *Id*.

[29] *Id.*, p. 121.

[30] *Id*.

[31] *Id.*, pp. 122-123.

[32] *Id.,* p. 122.

[33] *Id*.

quoted, which states that an illegal recruitment case may also be filed with the RTC of the province or city where the offended party actually resides at the time of the commission of the crime, was likewise invoked in the said motion.[34] Respondent averred that the records show that at the time of the incident up to the present, she resides in Sampaloc, Manila.[35]

Petitioner filed an Opposition[36] to the said motion. Respondent, through the public prosecutor, filed a Comment[37] thereon and a Reply[38] was then filed by the petitioner.

In an Order[39] dated March 16, 2012, the RTC denied respondent's motion for reconsideration, ruling that as stated in respondent's *Sinumpaang Salaysay,* the essential elements of Illegal Recruitment and Estafa took place in Kidapawan City and not in Manila. The allegation that several deposits for the payment of the placement fees were made in Manila is of no moment, according to the RTC, considering that the main transaction actually took place in Kidapawan City, which is the basis for determining the jurisdiction of the court. Thus:

> WHEREFORE, premises considered, the instant Motion for Reconsideration filed by the Prosecution is hereby DENIED for lack of merit. The Orders of the Court both dated January 26, 2012 still stand.
>
> SO ORDERED.[40]

The Ruling of the Court of Appeals

Undaunted, respondent filed a *Petition for Certiorari* before the CA.

---

[34] *Id.*

[35] *Id.*

[36] *Id.*, pp. 124-128.

[37] *Id.*, pp. 129-131.

[38] *Id.*, pp. 132-140.

[39] *Id.*, pp. 139-140.

[40] *Id*.

In its assailed Decision, the CA discussed, first, the issue of respondent's legal personality to file the said petition and second, the RTC's jurisdiction over the case.[41]

On the first issue, the CA ruled that while it is only the Office of the Solicitor General (OSG) that may represent the People or the State in criminal proceedings before this Court or the CA, the private offended party retains the right to bring a special civil action for *certiorari* in his/her own name in criminal proceedings before the courts of law.[42] The CA cited Section 1, Rule 122, which provides that the right to appeal from a final judgment or order in a criminal case is granted to any party except when the accused is placed thereby in double jeopardy.[43] It also cited this Court's ruling that the word party in the said provision must be understood to mean not only the government and the accused, but also other persons who may be affected by the judgment rendered in the criminal proceeding.[44] The private complainant, having an interest in the civil aspect of the case, thus, may file such action in his/her name to question the decision or action of the respondent court on jurisdictional grounds.[45] In line with this, the CA also ruled that there is no double jeopardy in this case as the charges were dismissed upon motion of the petitioner-accused.[46]

As to the issue on jurisdiction, the CA ruled that the RTC has jurisdiction over the cases of Illegal Recruitment and Estafa, citing Section 9 of RA 8042, which provides that a criminal action arising from illegal recruitment may be filed in the place where the offended party actually resides at the time of the commission of the offense.[47] According to the CA, it was

---

[41] *Supra* note 2.

[42] *Id*., p. 37.

[43] *Id*., p. 36.

[44] *Id.*

[45] *Id.,* p. 37.

[46] *Id.*

[47] *Id*., p. 39.

established that herein respondent was residing in Sampaloc, Manila at the time of the commission of the crimes.[48] Therefore, the two (2) Informations herein were correctly filed with the RTC of Manila, pursuant to Section 9 of RA 8042.[49] The CA disposed, thus:

> **WHEREFORE,** the petition for certiorari is **GRANTED.** The assailed *Order* dated January 26, 2012 and *Resolution* dated March 16, 2012 of the RTC, Manila, in Criminal Case No. 08-265539 for *estafa* and Criminal Case No. 08-265540 for *illegal recruitment* respectively, are **NULLIFIED and SET ASIDE.** The cases are **REINSTATED and REMANDED** to the court of origin for appropriate proceedings.
>
> **SO ORDERED.**[50]

Petitioner's motion for reconsideration was denied by the CA in its Resolution dated November 6, 2013, thus:

> **WHEREFORE,** the *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**[51]

Hence, this Petition.

Petitioner argues that the CA committed a reversible error and grave abuse of discretion in declaring that the respondent had the legal personality to assail the dismissal of the criminal cases as respondent is not the proper party to do so.[52] Petitioner argues that the OSG is the appellate counsel of the People of the Philippines in all criminal cases and as such, the appeal in the criminal aspect should be taken solely by the State and the private complainant is limited only to the appeal of the civil

---

[48] *Id*.

[49] *Id*.

[50] *Id.*, pp. 39-40.

[51] *Id.*, p. 42.

[52] *Supra* note 1, at 16.

aspect.[53] According to the petitioner, respondent's action before the CA does not concern the civil aspect of the case but the validity of the RTC's Orders.[54]

On the jurisdictional issue, the petitioner maintains that the RTC of Manila has no jurisdiction over the cases as the alleged acts constituting the crimes charged were committed in Kidapawan City and not in Manila.[55]

For her part, respondent argues that the argument as regards her legal personality in filing the *petition for certiorari* before the CA reveals that petitioner misunderstood the difference between an appeal and a special civil action for *certiorari* under Rule 65 of the Rules of Court.[56] In fact, respondent agrees with the petitioner that only the State, through the OSG, may file an appeal in a criminal case.[57] As an appeal is not available for a private complainant in a criminal case, an independent action through a *petition for certiorari* under Rule 65, therefore, is available to the said aggrieved party.[58]

Anent the jurisdictional issue, respondent again invokes Section 9 of RA 8042 which allows the filing of an action arising from illegal recruitment with the RTC of the complainant's residence.[59] The respondent further argues that as regards the charge of Estafa, considering that the same arose from the illegal recruitment activities, the said provision allows the filing thereof with the court of the same place where the Illegal Recruitment case was filed.[60] Besides, according to the respondent, since one of the essential elements of Estafa, *i.e.,* damage or prejudice

---

[53] *Id.*

[54] *Id.*, p. 19.

[55] *Id.*, p. 23.

[56] Comment, *rollo,* pp. 184-191.

[57] *Id.*, p. 186.

[58] *Id*.

[59] *Id.*, p. 188.

[60] *Id*.

to the offended party, took place in Manila, as the offended party resides in Manila, the RTC of Manila has jurisdiction over the Estafa case.[61]

Issues

1) Does the RTC of Manila have jurisdiction over the cases of Illegal Recruitment and Estafa?

2) Does the respondent, on her own, have legal personality to file the *petition for certiorari* before the CA?

The Court's Ruling

The issues shall be discussed *ad seriatim.*

The RTC of Manila has jurisdiction over the cases of Illegal Recruitment and Estafa

Indeed, venue in criminal cases is an essential element of jurisdiction.[62] As explained by this Court in the case of *Foz, Jr. v. People:*[63]

> It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. **Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial show that the offense**

---

[61] *Id.*

[62] *Ana Lou B. Navaja v. Hon. Manuel A. De Castro, or the Acting Presiding Judge of MCTC Jagna-Garcia-Hernandez, DKT Phils., Inc., represented by Atty. Edgar Borje,* G.R. No. 182926, June 22, 2015.

[63] 618 Phil. 120 (2009).

was committed somewhere else, the court should dismiss the action for want of jurisdiction.[64] *(emphasis ours)*

Section 15(a), Rule 110 of the Rules of Criminal Procedure provides:

SEC. 15. *Place where action is to be instituted.* — a) **Subject to existing laws,** the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. *(emphasis ours)*

At the risk of being repetitive, Sec. 9 of RA 8042, however, fixed an alternative venue from that provided in Section 15(a) of the Rules of Criminal Procedure, *i.e.,* a criminal action arising from illegal recruitment may also be filed where the offended party actually resides at the time of the commission of the offense and that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.[65]

Despite the clear provision of the law, the RTC of Manila declared that it has no jurisdiction to try the cases as the illegal Recruitment and Estafa were not committed in its territory but in Kidapawan City.[66]

We are, thus, one with the CA in finding that the RTC of Manila committed grave abuse of discretion and in fact, a palpable error, in ordering the quashal of the Informations. The express provision of the law is clear that the filing of criminal actions arising from illegal recruitment before the RTC of the province or city where the offended party actually resides at the time of the commission of the offense is allowed. It goes without saying that the dismissal of the case on a wrong ground, indeed, deprived the prosecution, as well as the respondent as complainant, of their day in court.

---

[64] *Id.*

[65] *Hon. Patricia A. Sto. Tomas, et al. v. Rey Salac, et al.,* G.R. Nos. 152642, 152710, 167590, 182978-79, 184298-99, November 13, 2012.

[66] *Supra* note 27.

It has been found by both the RTC and the CA that the respondent resides in Manila; hence, the filing of the case before the RTC of Manila was proper. Thus, the trial court should have taken cognizance of the case, and if it will eventually be shown during trial that the offense was committed somewhere else, then the court should dismiss the action for want of jurisdiction.[67] As a matter of fact, the RTC is not unaware of the above-cited provision which allows the filing of the said case before the RTC of the city where the offended party resides at the time of the commission of the offense; hence, it originally denied petitioner's Motion to Quash. This Court is, thus, baffled by the fact that the RTC reversed itself upon the petitioner's motion for reconsideration on the same ground that it previously invalidated.

Likewise, with the case of Estafa arising from such illegal recruitment activities, the outright dismissal thereof due to lack of jurisdiction was not proper, considering that as per the allegations in the Information, the same was within the jurisdiction of Manila. During the preliminary investigation of the cases, respondent even presented evidence that some of the essential elements of the crime were committed within Manila, such as the payment of processing and/or placement fees, considering that these were deposited in certain banks located in Manila.[68] Thus, it bears stressing that the trial court should have proceeded to take cognizance of the case, and if during the trial it was proven that the offense was committed somewhere else, that is the time that the trial court should dismiss the case for want of jurisdiction.[69]

Undoubtedly, such erroneous outright dismissal of the case is a nullity for want of due process. The prosecution and the respondent as the private offended party were not given the opportunity to present and prosecute their case. Indeed, the

---

[67] *Foz, Jr. v. People, supra* note 63.

[68] *Supra* note 31, at 122.

[69] *Foz, Jr. v. People, supra* note 63.

prosecution and the private offended party are as much entitled to due process as the accused in a criminal case.[70]

The respondent has the legal personality to file a *petition for certiorari* under Rule 65.

This procedural issue is not novel. There is no question that, generally, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case due to the final and executory nature of a judgment of acquittal and the constitutional prohibition against double jeopardy.[71] Despite acquittal, however, the offended party or the accused may appeal, but only with respect to the civil aspect of the decision.[72]

This Court has also entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissal of, criminal cases upon clear showing that the lower court, in acquitting the accused, committed not merely errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void.[73] When the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari,* the right of the accused against double jeopardy is not violated.[74]

---

[70] *People v. Honorable Pedro T. Santiago. in his capacity as Presiding Judge of Branch 101 of the Regional Trial Court of Quezon City and Segundina Rosario y Sembrano,* G.R. No. 80778, June 20, 1989.

[71] *People and AAA v. Court of Appeals, 21st Division, Mindanao Station, Raymund Carampatana, Joefhel Oporto, and Moises Alquizola,* G.R. No. 183652. February 25, 2015.

[72] *Id*.

[73] *People v. Hon. Enrique C. Asis, in his capacity as Presiding Judge of the Regional Trial Court of Biliran Province, Branch 16, and Jaime Abordo,* G.R. No. 173089, August 25, 2010 citing *People v. Louel Uy,* G.R. No. 158157, September 30, 2005, 471 SCRA 668, 680-681.

[74] *Id.*, citing *People v. Laguio, Jr.,* G.R. No. 128587, March 16, 2007, 518 SCRA 393, 408-409.

In as early as the 1989 case of *People v. Santiago,*[75] this Court has ruled that a private offended party can file a special civil action for *certiorari* questioning the trial court's order acquitting the accused or dismissing the case, *viz.*:

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

Moreover, there have been occasions when this Court has allowed the offended party to pursue the criminal action on his/her own behalf, as when there is a denial of due process as in this case.[76] Indeed, the right of offended parties to appeal or question an order of the trial court which deprives them of due process has always been recognized, the only limitation being that they cannot appeal any adverse ruling if to do so would place the accused in double jeopardy.[77]

At this juncture, We also uphold the CA's finding that double jeopardy does not exist in this case. Inasmuch as the dismissal of the charges by the RTC was done without regard to due process of law, the same is null and void.[78] It is as if there was

---

[75] *Supra* note 70.

[76] *Elvira O. Ong v. Jose Casim Genio,* G.R. No. 182336, December 23, 2009.

[77] *Leticia R. Merciales v. The Honorable Court of Appeals, The People of the Philippines Joselito Nuada, Pat. Edwin Moral, Adonis Nieves, Ernesto Lobete, Domil Grageda, and Ramon Pol Flores,* G.R. No. 124171, March 18, 2002.

[78] *Id*.

no acquittal or dismissal of the case at all, and the same cannot constitute a claim for double jeopardy.[79]

Also, it is elementary that double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent.[80] Thus, as found by the CA, double jeopardy does not attach in this case as the dismissal was granted upon motion of the petitioner. To be sure, no fundamental right of the petitioner was violated in the filing of the petition for *certiorari* before the CA by the respondent, as well as the grant thereof by the CA.

In fine, the dismissal of the cases below was patently erroneous and as such, invalid for lack of fundamental requisite, that is, due process[81]. For this reason, this Court finds the recourse of the respondent to the CA proper despite it being brought on her own and not through the OSG.

Besides, such technicality cannot prevail over the more fundamental matter, which is the violation of the right to due process resulting from the RTC's patent error. Nothing is more settled than the principle that rules of procedure are meant to be tools to facilitate a fair and orderly conduct of proceedings.[82] Strict adherence thereto must not get in the way of achieving substantial justice.[83] As long as their purpose is sufficiently met and no violation of due process and fair play takes place, the rules should be liberally construed.[84] Liberal construction

---

[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] *Foz, Jr. v. People, supra* note 63.

[83] *Id.*

[84] *Id.*

of the rules is the controlling principle to effect substantial justice.[85] The relaxation or suspension of procedural rules, or the exemption of a case from their operation, is warranted when compelling reasons or when the purpose of justice requires it.[86] Thus, litigations should, as much as possible, be decided on their merits and not on sheer technicalities.[87]

In all, since it is established that the RTC of Manila has jurisdiction over the Illegal Recruitment and Estafa cases, and there being no violation of the double jeopardy doctrine, the prosecution of the case may still resume in the trial court as held by the CA.

WHEREFORE, premises considered, the instant petition is **DENIED.** The Decision dated May 29, 2013 and Resolution dated November 6, 2013 of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211166. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PORFERIO CULAS *y* RAGA,** *accused-appellant.*

---

[85] *Id.*

[86] *Id.*

[87] *Id.*

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE (RPC); CRIMINAL LIABILITY IS EXTINGUISHED BY THE DEATH OF THE ACCUSED AS WELL AS THE CIVIL LIABILITY GROUNDED ON THE CRIMINAL ACTION; FOR CIVIL LIABILITY BASED ON SOURCES OTHER THAN DELICTS, VICTIM MAY FILE A SEPARATE CIVIL ACTION AGAINST THE ESTATE OF THE ACCUSED.— Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal case against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused[.] x x x Thus, upon accused-appellant'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 the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated July 18, 2014, the Court adopted the Decision[2] dated July 25, 2013 of the Court of Appeals (CA) in

---

[1] See Notice signed by Division Clerk of Court Ma. Lourdes C. Perfecto; *rollo*, pp. 35-36.

[2] *Id*. at 3-16. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla

CA-G.R. CEB-CR HC No. 00380 finding accused-appellant Porferio Culas *y* Raga (accused-appellant) guilty beyond reasonable doubt of the crime of Statutory Rape, the pertinent portion of which reads:

> **WHEREFORE**, the Court **ADOPTS** the findings of fact and conclusions of law in the July 25, 2013 Decision of the CA in CA-G.R. CEB-CR HC No. 00380 and AFFIRMS said Decision finding accused-appellant Porferio Culas *y* Raga **GUILTY** beyond reasonable doubt of Statutory Rape under paragraph 1 (d), Article 266-A in relation to Article 266-B (1) of the Revised Penal Code, sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole, with **MODIFICATIONS** as to the amounts of civil indemnity and damages awarded. Thus, [accused-appellant] is ordered to pay the following amounts: (*a*) ₱100,000.00 as civil indemnity; (*b*) ₱100,000.00 as moral damages; and (*c*) ₱100,000.00 as exemplary damages, plus legal interest at the rate of six percent (6%) *per annum* on the monetary awards from the dated of the finality of this judgment until fully paid.[3]

However, before an Entry of Judgment could be issued in the instant case, the Court received a Letter[4] dated September 16, 2014 from the Bureau of Corrections informing the Court of accused-appellant's death on February 8, 2014, as evidenced by the Certificate of Death[5] attached thereto.

As will be explained hereunder, there is a need to reconsider and set aside said Resolution dated July 18, 2014 and enter a new one dismissing the criminal case against accused-appellant.

Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal case against him. Article 89 (1) of the Revised

---

with Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan concurring.

[3] *Id*. at 35.

[4] *Id*. at 37. Signed by Officer-In-Charge of the New Bilibid Prison, P/Supt. I Roberto R. Rabo.

[5] *Id.* at 38 (including dorsal portion).

Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

Article 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. Layag*,[6] the Court thoroughly explained 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*."

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

[6] See G.R. No. 214875, October 17, 2016.

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.[7]

Thus, upon accused-appellant'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 the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.[8]

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolution dated July 18, 2014 in connection with this case; (*b*) **DISMISS** Crim. Case No. BN-01-02-3754 before the Regional Trial Court of Burauen, Leyte, Branch 15 by reason of the death of accused-appellant Porferio Culas *y* Raga; and (*c*) **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

---

[7] See *id.*, citing *People v. Egagamao*, G.R. No. 218809, August 3, 2016; further citation omitted.

[8] See *id.*; citations omitted.

SECOND DIVISION

[G.R. No. 215627. June 5, 2017]

LUIS S. DOBLE, JR., *petitioner, vs.* **ABB, INC./NITIN DESAI,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISMISSED THE PETITION AND REFUSED TO REINSTATE THE SAME DESPITE THE FACT THAT THE TWO DEFECTS NOTED IN THE RESOLUTION WERE SUBSTANTIALLY RECTIFIED.—** [T]he Court rules that the CA gravely erred when it dismissed outright the Petition for *Certiorari* and refused to reinstate the same, despite the fact that the two defects noted in the minute Resolution dated November 29, 2013 have already been substantially rectified. *First*, the CA gravely erred in dismissing the petition on the ground that the assailed NLRC Decision and Resolution attached thereto are mere "certified photocopies" and not duplicate originals or certified true copies. x x x In this case, a perusal of the attached NLRC Decision and Resolution shows that they are indeed certified photocopies of the said decision and resolution. Each page of the NLRC Decision and the Resolution has been certified by the NLRC Sixth Division's Deputy Clerk of Court, Atty. Cherry P. Sarmiento, who is undisputedly the proper officer to make such certification. Moreover, the attached copies of the NLRC Decision and Resolution appear to be faithful reproductions thereof. Thus, there is substantial compliance with Section 1, Rule 65 of the Rules of Court which provides that any petition filed under Rule 65 should be accompanied by a certified true copy of the judgment, order or resolution subject thereof. *Second*, the CA also gravely erred in denying the Motion for Reconsideration of the Resolution dated November 29, 2013 which dismissed the Petition for *Certiorari* on the ground that petitioner's counsel had conceded his inability to comply with the Mandatory Continuing Legal Education (*MCLE*) requirement. x x x [I]t bears to stress that petitioner's counsel later submitted Receipts

of Attendance in the MCLE Lecture Series for his MCLE Compliance IV on March 3, 2014 and the Certificate of Compliance albeit on January 26, 2015. Hence, the CA erred in issuing the assailed November 28, 2014 Resolution denying Doble's motion for reconsideration, there being no more reason not to reinstate the petition for *certiorari* based on procedural defects which have already been corrected.

2. **ID.; RULE 45 PETITION; ONLY ERRORS OF LAW MAY BE REVIEWED BY THE COURT; ONE OF THE EXCEPTIONS, APPLIED.—** While as a general rule, only errors of law are reviewed by the Court in petitions for review under Rule 45, one of the well-recognized exceptions to this rule is when the factual findings of the NLRC contradict those of the labor arbiter. In the interest of substantial justice, judicial economy and efficiency, and given that the records on hand are sufficient to make a determination of the validity of Doble's dismissal, the Court may re-evaluate and review the factual findings of the labor tribunals, instead of remanding the case before the CA for the resolution of the case on the merits.

3. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL, NOT A CASE OF; RESPONDENTS WERE ABLE TO PROVE THAT PETITIONER VOLUNTARILY RESIGNED.—** [T]he Court agrees with the NLRC that ABB, Inc. and Desai were able to prove by substantial evidence that Doble voluntarily resigned[.] x x x Even if the option to resign originated from the employer, what is important for resignation to be deemed voluntary is that the employee's intent to relinquish must concur with the overt act of relinquishment. There can be no doubt as to the drastic and shocking nature of the abrupt decision of ABB, Inc. to let Doble resign on March 13, 2012 after almost 19 years of dedicated and satisfactory service, on account of the extent of losses, the level of discontent among the ranks of PS Division, and the ABB, Inc. Global and Regional management's demand for a change in leadership. It bears emphasis, however, that between the start of the conference at around 11:00 a.m. and about eight (8) hours later in the evening when he left the company premises, Doble negotiated for a higher separation pay, *i.e.*, from 75% of the monthly salary for every year of service allowed under the company retirement

plan up to double that amount, or 1.5 month's pay for every year of service. In fact, Doble tendered a resignation letter only after being offered a better separation benefit of 1-month pay for every year of service, and even submitted a separate letter expressing his intent to buy his service vehicle. After considering the acts of Doble before and after his resignation, the Court is convinced of Doble's clear intention to sever his employment with ABB, Inc.

4. **ID.; ID.; ID.; ID.; NOT ALL QUITCLAIMS ARE INVALID AND AGAINST PUBLIC POLICY; REQUISITES OF A VALID QUITCLAIM PRESENT IN CASE AT BAR.—** [N]ot all quitclaims are invalid and against public policy. "If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is a clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction." Cases abound where the Court gave effect to quitclaims executed by the employees when the employer is able to prove the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or goods customs, or prejudicial to a third person with a right recognized by law. ABB, Inc. and Desai proved by substantial evidence the presence of all these requisites[.]

5. **ID.; ID.; ID.; ID.; ID.; "DIRE NECESSITY" IS NOT AN ACCEPTABLE GROUND FOR ANNULING THE RELEASE AND QUITCLAIM WHEN IT IS NOT SHOWN THAT THE EMPLOYEE HAS BEEN FORCED TO EXECUTE IT; PETITIONER, BEING A PERSON OF HIGH EDUCATIONAL ATTAINMENT AND MANAGERIAL EMPLOYMENT STATURE, CANNOT BE EASILY DUPED INTO SIGNING A QUITCLAIM AGAINST HIS WILL.—** Doble can hardly claim that he was forced to execute the Receipt, Release and Quitclaim on March 23, 2012, because he met Miranda alone outside company premises at McDonalds, Alabang Town Center, Muntinlupa City. He cannot also claim that there

was fraud or deceit nor that the consideration for the waiver and quitclaim was unjust and unreasonable. That no portion of his retirement pay will be released or his urgent need for funds does not constitute the pressure or coercion contemplated by law as a valid reason to nullify a quitclaim. While "dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it, the same is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it. As aptly pointed out by the NLRC, Doble is a Vice-President of the company, a highly educated person, *i.e.*, a duly-licensed engineer, who had worked with the company for almost 19 years, and the benefits he received from his resignation in the total amount of ₱2,815,222.07 are undisputedly more than that allowed under the company retirement plan. As a person of high educational attainment and managerial employment stature, Doble is expected to know the import of everything he executes, and cannot be easily duped into signing a quitclaim against his will.

6. **ID.; ID.; ID.; ID.; ID.; AN IMPROPERLY NOTARIZED QUITCLAIM IS STILL A VALID AND BINDING CONTRACT.—** There is also no merit in Doble's contention that the Receipt, Release and Quitclaim is void because it was made to appear that he appeared before a notary public on April 10, 2012 when in fact he already filed an illegal dismissal complaint on March 26, 2012. Regardless of the fact that it was improperly notarized, the said quitclaim is a valid and binding contract between him and ABB, Inc., since the authenticity and due execution thereof is undisputed. Such lack of proper notarization does not render a private document void or without legal effect, but merely exposed the notary public to prosecution for possible violation of notarial laws, as well as the one who caused the same for falsification of public document.

APPEARANCES OF COUNSEL

Patricio L. Boncayao, Jr., for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondents.

D E C I S I O N

PERALTA, *J*.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the minute Resolution[1] dated November 29, 2013 and Resolution[2] dated November 28, 2014 issued by the Court of Appeals, and to reinstate with modification the Decision dated November 29, 2012 of the Labor Arbiter in NLRC-Case No. NCR-03-04889-12.

The facts are as follows:

Petitioner Luis S. Doble, Jr., a duly licensed engineer, was hired by respondent ABB, Inc. as Junior Design Engineer on March 29, 1993. During almost nineteen (19) years of his employment with the respondent ABB, Inc. prior to his disputed termination, Doble rose through the ranks and was promoted as follows:

1. 1994 -Design Engineer
2. 1996 - Sales Engineer of the Network Protection
3. 1999 - Senior Sales Engineer of the Power Technology Utility Automation Business
4. March 2005 - Manager for Sales Sub-Station Automation Business Unit, Power System Division
5. July 2006 - Officer-In-Charge of the Power Technology Utility Business Unit
6. March 2007 - Senior Manager and Head of the Power Technology Utility Automation, Power System Division

---

[1] *Rollo*, p. 56; signed by Court of Appeals Eleventh (11th) Division Clerk of Court Atty. Celedonia M. Ogsimer, and witnessed by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion, concurring.

[2] *Id*. at 59-60; penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion, concurring.

7. November 2008 - Local Division Manager, Power System Division

8. March 2010 – Vice-President and Local Division Manager of Power System Division.

As a matter of policy, ABB, Inc. conducts the yearly Performance and Development Appraisal of all its employees. In all years prior to 2008, Doble was rated with grades three (3) or four (4), which are equivalent to Strong Performance or Superior Results. In the years 2008, 2009, and 2010, he received a performance rating of 4 for superior results.

On March 2, 2012, Doble was called by respondent ABB, Inc. Country Manager and President Nitin Desai, and was informed that his performance rating for 2011 is one (1) which is equivalent to unsatisfactory performance.

On March 13, 2012, at about 10:45 a.m., a company Executive Assistant informed Doble that he has a meeting with ABB, Inc. President Desai and Country Human Resource (*HR*) Manager Marivic Miranda at 11:15 a.m. in the Luzon Conference Room of ABB, Inc.

During the meeting, ABB, Inc. President Desai explained to Doble that the Global and Regional Management have demanded for a change in leadership due to the extent of losses and level of discontent among the ranks of the PS Division. Desai then raised the option for Doble to resign as Local Division Manager of the PS Division. Thereafter, HR Manager Miranda told Doble that he would be paid separation pay equivalent to 75% of his monthly salary for every year of service, provided he would submit a letter of resignation, and gave him until 12:45 p.m. within which to decide. Shocked by the abrupt decision of the management, Doble asked why he should be the one made to resign. Miranda said that it was the decision of the management, and left him alone in the conference room to decide whether or not to resign. At this juncture, the parties gave contrasting accounts on the ensuing events which led to the termination of Doble's employment.

Doble narrated in his Position Paper how he was constructively dismissed and forced to resign:

21. [HR Manager Miranda] came back at about 12:45 o'clock in the afternoon and asked the complainant if he was able to decide already. Complainant told Mrs. Miranda that he could not decide because he was in a quandary why he was [the one being] made to resign;

22. Then, Mrs. Miranda said that complainant could be given One Month Separation Pay per year of service instead of 75% of the monthly salary. Complainant again asked Mrs. Miranda why he was the one being made to resign. Mrs. Miranda repeated that it was the decision of the management;

23. Complainant told Mrs. Miranda that he was already so hungry, thirsty, weak and tired because of extreme pressure. So, he asked Mrs. Miranda to allow him to go back to his office and to buy food in the canteen;

24. Mrs. Miranda said that she would be the one to request somebody to buy food for him and that he (complainant) should just eat in the conference room;

25. However, complainant appealed to Mrs. Miranda to allow him to return to his office where he could eat. She allowed complainant under [the] condition that he should go back to the conference room at 2:00 o'clock in the afternoon. Mrs. Miranda instructed complainant not to leave the company premises to take lunch and informed him that she gave instruction to the security guard of the gate not to allow him to go outside the company;

26. At 2:00 o'clock in the afternoon, complainant returned to the Luzon Conference Room. Mrs. Miranda asked complainant [about] the letter of resignation. Complainant answered that he had not prepared a resignation letter. Complainant did not prepare the resignation letter because he was aware that respondents were actually terminating his services illegally and without due process, that the letter of resignation he was being made to prepare was only a **"palusot"** (to borrow the word of Cong. Fariñas) of respondent.

27. **Mrs. Miranda again told the complainant to prepare the resignation letter as she said there was a need to complete the process within that day and further told him that he would not**

be allowed to leave the company without finishing all the necessary papers and that he would not be permitted to return to the company on the following days;

28. Complainant could not do anything. Under the extreme pressure and threat of Mrs. Miranda, he went to his office and prepared the letter of resignation;

29. In his office, complainant was surprised when he did not have an access anymore on the server and could not use his computer. He learned from the IT personnel that after the office hours on March 12, 2012 his access to the computer system was already cut upon instruction of the top management. So, he just used the computer of his staff in the preparation of the letter of resignation;

30. At about 4:30 o'clock in the afternoon, the Country HR Manager Mrs. Miranda came to the office of the complainant to get the resignation letter. Complainant gave it to Mrs. Miranda. The letter states that:

March 13, 2012

"To: Mr. Nitin Desai
President

Marivic Miranda
Country HR

Dear Sir/Madam,

As per your instruction, I am sending you my immediate resignation effective today, March 13, 2012 as Vice-President of Power Systems Division.

Very Truly Yours,

SGD. Luis S. Doble, Jr."

x x x x x x x x x

Upon reading it, Mrs. Miranda did not like the contents and told the complainant to make another letter of resignation and instructed him to put the words, **"tendering my immediate resignation"** and to remove the words, **"as per your instruction."**

31. Complainant told Mrs. Miranda that he could not change the letter because he made the letter upon her instruction. But, Mrs. Miranda insisted to revise the letter of resignation and submit it before 7:00

o'clock in the evening. Though against his conscience, complainant revised the letter of resignation. Complainant was also told by Mrs. Miranda if he would purchase the company Car Plan of the 2009 Ford Escape being used by him so that the balance leasing cost could be deducted from his separation pay. As complainant could do nothing, he just agreed to buy the car. Mrs. Miranda also informed complainant that she would be the one to prepare the letter of intent to purchase the car for him to sign. Then, Mrs. Miranda left.

32. About 6:30 o'clock in the evening, complainant submitted the revised letter of resignation. His revised letter of resignation following the instruction of Mrs. Miranda states that:

March 13, 2012

"To: Mr. Nitin Desai
President

Marivic Miranda
Country HR

Dear Sir/Madam,

I am tendering my immediate resignation effective today, March 13, 2012 as Vice-President of Power Systems Division.

Very Truly Yours,

SGD. Luis S. Doble, Jr."

x x x x x x x x x

33. About 8:00 o'clock in the evening, Mrs. Miranda went to the office of the complainant and let him sign the Letter of Intent to purchase the car and the Letter of Acceptance dated March 13, 2012. x x x The letter [of acceptance] states that:

March 13, 2012

Luis S. Doble, Jr.
Vice-President
PS Division

Thru: Nitin Desai
Country HR Manager and President

Dear Luis,

Relative to your letter dated March 13, 2012 informing us of your resignation from ABB effective March 13, 2012 please be informed that the same is accepted after your completion of the Company's Clearance process.

Thank you for your support to ABB, Inc., and we wish you luck in your future endeavors.

Truly Yours,

SGD. Marivic Miranda
Country HR Manager

Received by:

SGD. Luis S. Doble, Jr.
Date: 3/13/201"

Mrs. Miranda also brought with her the Employee Clearance Sheet dated March 13, 2012 of complainant already signed by her with same date March 13, 2012. Then, she let complainant surrender the company ID, mobile phone, laptop and cabinet keys. She went to the car of the complainant in the parking area, checked it and got the Caltex Gasoline Star Card and the Safety Medical Kit;

34. At time, it was already about 8:30 o'clock in the evening. Complainant was tired, stressed, weak, felt uneasy, mentally and psychologically disturbed and hungry as his detention had lasted for more than eight (8) hours already from 11:15 o'clock in the morning to 8:40 o'clock in evening;

35. Complainant was only allowed to leave the office at about 8:40 o'clock in the evening. Mrs. Miranda called and informed the gate guard to already allow the complainant to leave the company premises;

x x x x x x x x x.[3]

On the part of ABB, Inc., HR Manager Miranda narrated in her affidavit how Doble voluntarily resigned:

6. x x x At about 12:45 p.m., I returned to the Luzon Room and he told me that he has yet to decide. At this time, he requested that

---

[3] *Id.* at 70-74. (Emphasis in the original)

he would want to go to his room and eat lunch. I offered that I could request someone to buy for him food instead. He reiterated his request to go back to his room and eat and I said by all means he can;

7. Thereafter, I told him that we may meet again to discuss his resignation. He asked what time and I replied that 2:00 p.m. would be ideal. He agreed. At around 2:00 p.m., Mr. Doble did not come back to the Luzon room. At 2:30 p.m., however, we met again;

8. At this meeting, I asked him whether he has made a decision. He then attempted to negotiate by proposing to get a resignation benefit equivalent to 1.5 month's pay and said that if he is given said amount, there will be no issue, no labor case between him and ABB, Inc. I told him that the request could not be accommodated, as the policy provides 75% month's pay for every year of service. I then suggested to him that he could talk to Mr. Desai regarding this request but he declined. At this point, he requested that the separation benefit be higher, as he anticipates that there will still be deductions thereon. I left the room to confer with Mr. Desai, and ABB's Chief Finance Officer, Mr. Robert Ramos. It was agreed that we can extend a one-month pay per every year of service to Mr. Doble in consideration of his tenure of service with ABB. Thereafter, I returned to the Luzon Room to inform Mr. Doble that ABB would be willing to give him a separation benefit equivalent to one-month pay per every year of service. Unrelenting, he again negotiated the possibility of a higher amount. I replied that this is ABB's final and last offer. He then said that he will draft his letter of resignation.

x x x x x x x x x

10. At around 4:30 p.m., Mr. Doble handed me a resignation letter which read as follows: "as per your instruction, I am sending you my immediate resignation effective today, March 13, 2012 as Vice-President of Power Systems Division." I expressed my strong disagreement with the wordings of the resignation letter and asked him to remove the phrase "as per your instruction." ABB and I never gave him any instruction/s to resign. I emphasized to him that it was his decision to resign. Thus, he agreed to revise the letter. Also, contrary to Mr. Doble's assertion in his Position Paper, I never imposed any deadline on the submission of the revised letter.

11. He then brought up the possibility of purchasing the company-issued vehicle. I responded that it is possible but he has to make a request. I volunteered to draft the document signifying his intent to purchase the company-issued vehicle.

12. At about 6:00 p.m., Mr. Doble went to my office and gave me the revised resignation letter. I then told him that I will prepare the acceptance letter, the clearance form and request to purchase the vehicle. I asked him whether he will come to my office or shall I go to his office. He responded that I should just go to his office.

13. Around 7:00 p.m., I gave him a copy of ABB's letter of acceptance of his resignation and the employee's clearance form. As he has already returned the company-issued mobile phone and laptop computer to me, I acknowledged the same and then signed the employee clearance form to reflect the surrender of these items. I also gave him the draft of the intent to purchase the company-issued vehicle, which he there and then signed. He left the clearance form to me for routing to the various heads of office in ABB.

14. It was at this point that he asked me as to when he will receive the resignation benefit, as some of his payables are coming up in the following days. I told him that processing usually takes 5-7 work days because a big part of the resignation benefit will not come directly from ABB but from the retirement plan manager – BPI. Nevertheless, I told him that I would do my best to have the resignation benefit released to him, if possible, on 16 March 2012 and told him to give me his personal mobile number and to make follow-ups *via* text message.

15. On 23 March 2012, I met Mr. Doble at McDonald's Alabang Town Center – the venue that we both agreed to meet because his vehicle could not go farther because of the vehicle volume reduction scheme and because it was the graduation of his son later in the afternoon. Thereat, he received the check for his resignation benefit and signed all the pertinent documents, including a Release and Quitclaim.[4]

On March 26, 2012, Doble filed a Complaint[5] for illegal dismissal with prayer for reinstatement and payment of backwages, other monetary claims and damages.

In a Decision dated November 29, 2012, the Labor Arbiter[6] held that Doble was illegally dismissed because his resignation

---

[4] *Id*. at 163-165.

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

[6] Labor Arbiter Gaudencio P. Demaisip, Jr.

was involuntary, and ordered ABB, Inc. and Desai to pay his backwages and separation pay, since reinstatement is no longer feasible. The dispositive portion of the Decision reads:

> IN VIEW OF THE FOREGOING, respondent[s] is [are] directed to pay the complainant of his backwages from the time of complainant's dismissal up to the finality of this Decision and such award is computed at One Million Six Hundred Forty-Eight Thousand Nine Hundred Seventeen Pesos and 24/100 (₱1,648,917.24) as of this date, the computation of which is shown below:
>
> Backwages:
>
> 3/13/12 – 11/29/12 = 8.53 Mos.
> ₱193,308 x 8.53 mos. = ……………….₱1,648,917.24
>
> Complainant is deemed paid of his separation pay.
>
> The rest of the claims are dismissed for lack of merit.
>
> SO ORDERED.[7]

Aggrieved by the Decision of the Labor Arbiter, ABB, Inc. and Desai filed an appeal, whereas Doble filed a partial appeal from the dismissal of his monetary claims.

In a Decision dated June 26, 2013, the two (2) Commissioners[8] of the NLRC Sixth Division voted to grant the appeal filed by ABB, Inc. and Desai, and to dismiss the partial appeal of Doble. They found that the resignation of Doble being voluntary, there can be no illegal dismissal and no basis for the award of other monetary claims, damages and attorney's fees. However, one NLRC Commissioner[9] dissented in this wise:

> The complainant has no reason to resign, much less to abruptly resign on March 13, 2012. What happened on that day was that complainant was called to a meeting by the company President who told him that his performance or rating the previous year was

---

[7] *Rollo*, p. 197.

[8] Commissioners Nieves E. Vivar-De Castro and Isabel G. Panganiban-Ortiguerra.

[9] Presiding Commissioner Joseph Gerard E. Mabilog.

unsatisfactory. In the same meeting the President gave him the option to resign. x x x In simple terms, the company wants to get rid of him so he can either resign or be fired. Clearly, his resignation is not voluntary. Besides, why would he file for illegal dismissal and reinstatement if he voluntarily resigned?[10]

Doble filed a motion for reconsideration, but the NLRC denied the motion in a Resolution dated August 14, 2013 for lack of compelling reason to disturb its findings and conclusions. Dissatisfied with the NLRC Decision and Resolution, Doble filed a petition for *certiorari* before the Court of Appeals (*CA*).

In a minute Resolution[11] dated November 29, 2013, the CA dismissed outright the Petition for *Certiorari* because (1) "the assailed National Labor Relations Commission (NLRC) Decision and Resolution attached are mere 'CERTIFIED PHOTOCOP(IES)' and not duplicate originals or certified true copies;" and (2) "petitioner's counsel's MCLE Compliance No. III-0006542' xxx does not appear to have complied with the Fourth (IV) MCLE compliance period."

In a Resolution dated November 28, 2014, the CA also denied petitioner's motion for reconsideration because (1) the NLRC Decision and Resolution attached to the petition were certified "photo" copies, unlike the specific requirement for a certified "true" copy, or a "clearly legible duplicate original or certified true copy" of the assailed disposition, and (2) petitioner's counsel conceded his inability to comply with the MCLE requirement.[12]

Disgruntled with the Resolutions of the CA, Doble filed this petition for review on *certiorari*, raising the following arguments:

I. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION ON MERE TECHNICALITY DESPITE THAT PETITIONER HAS THE MOST PERSUASIVE REASON TO RELAX THE APPLICATION OF THE RULES OF

---

[10] *Rollo*, p. 285.

[11] *Id*. at 56.

[12] *Id*. at 59-60.

PROCEDURES TO AFFORD HIM THE OPPORTUNITY TO VENTILATE HIS CASE ON THE MERITS.

II. WITH DUE RESPECT, THE QUESTIONED RESOLUTIONS ARE CONTRARY TO THE LIBERAL APPLICATION OF THE RULES OF PROCEDURE AND TO THE CASE OF GALANG VS. COURT OF APPEALS, ET AL., G.R. NO. 76221, JULY 29, 1991.

III. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SHOULD HAVE DECIDED THE PETITION ON THE MERITS INSTEAD OF DISMISSING THE SAME PURELY ON TECHNICAL GROUNDS IN THE INTEREST OF JUSTICE AND EQUITY AND THAT THE ASSAILED RESOLUTIONS ARE CONTRARY TO THE CASE OF YONG CHAN KIM VS. PEOPLE OF THE PHILIPPINES, HON. EDGAR D. GUSTILO, PRESIDING JUDGE, RTC, 6TH JUDUCIAL REGION, BRANCH 28, ILOILO CITY AND COURT OF APPEALS (13TH DIVISION), SOUTHEAST ASIAN FISHERIES DEVELOPMENT CENTER AQUACULTURE DEPARTMENT (SEAFDEC), G.R. NO. 84719, AUGUST 10, 1989.[13]

Faulting grave abuse of discretion against the NLRC for dismissing his complaint for illegal dismissal, Doble prays for the reinstatement of the Decision of the Labor Arbiter with the following modifications:

1. ordering the respondents, jointly and severally, to reinstate the petitioner with full backwages without loss of seniority rights and benefits from the time he was dismissed until his actual reinstatement;

2. ordering the respondents, jointly and severally, to pay petitioner the following allowance and benefits –

    a. Recreational allowance of ₱180,000.00 per year;

    b. Bonus of 3.9 months of his total monthly salary equivalent to an average of ₱750,000.00 every year;

    c. Rice subsidy monthly converted to cash in the average amount of ₱20,400.00 per year;

    d. 15 days sick leave, 15 days vacation leave and 3 days long service leave per year; and

---

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

e. 13th month pay equivalent to one (1) month salary.

3. ordering the respondents, jointly and severally, to pay petitioner ₱1,000,000.00 as moral damages;

4. condemning the respondents, jointly and severally, to pay petitioner ₱1,000,000.00 as exemplary damages;

5. ordering the respondents, jointly and severally, to pay a fine of ₱1,000,000.00 for dismissing the petitioner without due process;

6. ordering the respondents, jointly and severally, to pay petitioner ₱100,000.00 as actual damages for acceptance fee and ₱5,000.00 per hearing;

7. ordering the respondents, jointly and severally, to pay 10% attorney's fees of the total monetary award.[14]

The petition is partly impressed with merit on procedural grounds, but still devoid of substantive merit.

On the procedural aspect, the Court rules that the CA gravely erred when it dismissed outright the Petition for *Certiorari* and refused to reinstate the same, despite the fact that the two defects noted in the minute Resolution dated November 29, 2013 have already been substantially rectified.

First, the CA gravely erred in dismissing the petition on the ground that the assailed NLRC Decision and Resolution attached thereto are mere "certified photocopies" and not duplicate originals or certified true copies. The CA's inordinate nitpicking on procedural requirements is contrary to the Court's ruling in *Coca-Cola Bottlers Phils., Inc. v. Cabalo*:[15]

The problem presented is not novel. In fact, it is a fairly recurrent one in petitions for *certiorari* of NLRC decisions as it seems to be the practice of the NLRC to issue certified "xerox copies" only instead of certified "true copies." We have, however, put an end to this issue in *Quintano v. NLRC* when we declared that **there is no substantial distinction between a photocopy or a "Xerox copy" and a "true**

[14] *Id.* at 49.

[15] 516 Phil. 327 (2006).

copy" for as long as the photocopy is certified by the proper officer of the court, tribunal, agency or office involved or his duly-authorized representative and that the same is a faithful reproduction of the original. We held therein:

> The submission of the duplicate original or certified true copy of judgment, order, resolution or ruling subject of a petition for certiorari is essential to determine whether the court, body or tribunal, which rendered the same, indeed, committed grave abuse of discretion. The provision states that either a legible duplicate original or certified true copy thereof shall be submitted. If what is submitted is a copy, then it is required that the same is certified by the proper officer of the court, tribunal, agency or office involved or his duly-authorized representative. The purpose for this requirement is not difficult to see. It is to assure that such copy is a faithful reproduction of the judgment, order, resolution or ruling subject of the petition.
>
> x x x x x x x x x
>
> Indeed, for all intents and purposes, a certified Xerox copy is no different from a certified true copy of the original document. The operative word in the term certified true copy under Section 3, Rule 46 of the Rules of Court is certified. The word means made certain. It comes from the Latin word *certificare* meaning, to make certain. Thus, as long as the copy of the assailed judgment, order, resolution or ruling submitted to the court has been certified by the proper officer of the court, tribunal, agency or office involved or his duly-authorized representative and that the same is a faithful reproduction thereof, then the requirement of the law has been complied with. It is presumed that, before making the certification, the authorized representative had compared the Xerox copy with the original and found the same a faithful reproduction thereof.[16]

In this case, a perusal of the attached NLRC Decision and Resolution shows that they are indeed certified photocopies of the said decision and resolution. Each page of the NLRC Decision and the Resolution has been certified by the NLRC Sixth Division's Deputy Clerk of Court, Atty. Cherry P. Sarmiento,

---

[16] *Coca-Cola Bottlers Phils., Inc. v. Cabalo, supra*, at 334-335. (Emphasis added and citations omitted.)

who is undisputedly the proper officer to make such certification.[17] Moreover, the attached copies of the NLRC Decision and Resolution appear to be faithful reproductions thereof. Thus, there is substantial compliance with Section 1, Rule 65 of the Rules of Court which provides that any petition filed under Rule 65 should be accompanied by a certified true copy of the judgment, order or resolution subject thereof.

Second, the CA also gravely erred in denying the Motion for Reconsideration of the Resolution dated November 29, 2013 which dismissed the Petition for *Certiorari* on the ground that petitioner's counsel had conceded his inability to comply with the Mandatory Continuing Legal Education (*MCLE*) requirement.

On point is *People v. Arrojado*[18] where it was held that the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case:

> In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an *En Banc* Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, **under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records.** Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.[19]

Granted that the Petition for *Certiorari* was filed before the CA on October 29, 2013 even before the effectivity of *En*

---

[17] *Rollo*, pp. 276-285, 308-309; CA *rollo*, pp. 48-59.

[18] G.R. No. 207041, November 9, 2015, 774 SCRA 193.

[19] *People v. Arrojado*, *supra,* at 203. (Emphasis added.)

Banc Resolution dated January 14, 2014 which amended B.M. No. 1922,[20] it bears to stress that petitioner's counsel later submitted Receipts of Attendance in the MCLE Lecture Series for his MCLE Compliance IV[21] on March 3, 2014 and the Certificate of Compliance[22] albeit on January 26, 2015. Hence, the CA erred in issuing the assailed November 28, 2014 Resolution denying Doble's motion for reconsideration, there being no more reason not to reinstate the petition for *certiorari* based on procedural defects which have already been corrected. Needless to state, liberal construction of procedural rules is the norm to effect substantial justice, and litigations should, as much as possible, be decided on the merits and not on technicalities.

While as a general rule, only errors of law are reviewed by the Court in petitions for review under Rule 45, one of the well-recognized exceptions to this rule is when the factual findings of the NLRC contradict those of the labor arbiter.[23] In the interest of substantial justice, judicial economy and efficiency, and given that the records on hand are sufficient to make a determination of the validity of Doble's dismissal, the Court may re-evaluate and review the factual findings of the labor tribunals, instead of remanding the case before the CA for the resolution of the case on the merits.

On the substantive issue of whether Doble was illegally dismissed, the Court holds that he voluntarily resigned, and was not constructively dismissed.

In illegal dismissal cases, the fundamental rule is that when an employer interposes the defense of resignation, the burden to prove that the employee indeed voluntarily resigned necessarily

---

[20] Re: Number and Date of MCLE Certificate of Completion/Exemption Required in All Pleadings/Motions dated June 3, 2008.

[21] *Rollo*, p. 358.

[22] *Id.* at 361.

[23] *Philippine Savings Bank v. Barrera,* G.R. No. 197393, June 15, 2016.

rests upon the employer.[24] The concepts of constructive dismissal and resignation are discussed in *Gan v. Galderma Philippines, Inc.,*[25] thus:

To begin with, constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.

On the other hand, "[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."[26]

Guided by these principles, the Court agrees with the NLRC that ABB, Inc. and Desai were able to prove by substantial evidence that Doble voluntarily resigned, as shown by the following documents (1) the affidavit of ABB, Inc.'s HR Manager Miranda;[27] (2) the resignation letter;[28] the letter of intent to

---

[24] *San Miguel Properties Phils., Inc. v. Gucaban*, 669 Phil. 288, 297 (2011).

[25] 701 Phil. 612 (2013).

[26] *Gan v. Galderma Philippines, Inc., et al., supra*, at 638-639. (Citations omitted.)

[27] *Rollo*, pp. 163-165.

[28] *Id*. at 123.

purchase service vehicle;[29] and ABB, Inc.'s acceptance letter,[30] all dated March 13, 2012, (3) the Employee Clearance Sheet;[31] (4) the Certificate of Employment dated March 23, 2012;[32] (5) photocopy of Bank of the Philippine Islands manager's check[33] in the amount of ₱2,009,822.72, representing the separation benefit; (6) Employee Final Pay Computation,[34] showing payment of leave credits, rice subsidy and bonuses, amounting to ₱805,399.35; and (7) the Receipt, Release and Quitclaim for a consideration of the total sum of ₱2,815,222.07.[35]

For his part, Doble insisted that he was constructively dismissed because he was threatened, detained as if he were a prisoner, unreasonably pressured and compelled to write a resignation letter for more than eight (8) hours inside the company office. Because of the incident, which supposedly besmirched his reputation, he claimed to have suffered embarrassment before his staff and other personnel, sleepless nights, moral shock and anxiety. He even claimed to have received calls and text messages from customers, competitors, colleagues and friends because of what the company did to him. Apart from his bare and self-serving allegations, however, Doble failed to present substantial documentary or testimonial evidence to corroborate the same. It is well settled that bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[36] Neither can it be held that Doble was constructively dismissed because there is no evidence on record of any act of clear discrimination, insensibility, or disdain towards him which

---

[29] *Id*. at 124.

[30] *Id*. at 125.

[31] *Id*. at 126.

[32] *Id*. at 99.

[33] *Id*. at 128.

[34] *Id*. at 129.

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

[36] *Paredes v. Feed The Children Philippines, Inc.*, G.R. No. 184397, September 9, 2015, 730 SCRA 203, 220.

rendered his continued employment unbearable or forced him to terminate his employment from ABB, Inc., much less a claim of demotion in rank or a diminution of pay and other benefits.

Since Doble claims to have been forced to submit a resignation letter, it is incumbent upon him to prove with clear and convincing evidence that his resignation was not voluntary, but was actually a case of constructive dismissal, *i.e.,* a product of coercion or intimidation.[37] Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants.[38] The requisites for intimidation to vitiate one's consent are stated in *St. Michael Academy v. NLRC*,[39] thus:

. . . (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property x x x.

After a careful review of the records, the Court finds that the above-stated requisites are absent, and that the NLRC has exhaustively discussed that Doble was not coerced into submitting a resignation letter, thus:

" [c]omplainant has been employed with Respondent-ABB for nineteen (19) years. He is holding one of the top positions in the company and answerable only to the President, herein Respondent-Desai. He is a highly educated man. It is improbable that a man of his stature may be pressured into doing something that he does not want to do. Being a man of high educational attainment and qualifications, he is expected to know the import of everything he executes. His claim that he was forced to resign by HR Miranda is

---

[37] *Gan v. Galderma Philippines., Inc., supra* note 25, at 640.

[38] *Id.*

[39] 354 Phil. 491, 509-510 (1998).

unbelievable. **The Complainant is the Vice-President and Local Division Manager of the Power System Division of the Respondent-ABB, while HR Miranda is the Country HR Manager. The latter does not outrank the former. It is likewise unbelievable that the HR Manager would prevent the Complainant from leaving the premises of the company nor prevent him from taking his lunch wherever he wants to take it. HR Miranda simply does not have that power and she cannot possibly do that to a high-ranking officer who has served the company for nineteen (19) years**. The event of 13 March 2012 is undoubtedly stressful to the Complainant as the top management had already expressed displeasure with his performance. But such degree of tension is expected in a corporation environment where the primordial consideration is to earn profit. **As stated in the sworn statement of HR Miranda, the Complainant was given the option to resign by Respondent-Desai. Her statement that the Complainant negotiated for a higher benefit is more attuned with what actually transpired on 13 March 2012. The retirement plan for Respondent-ABB only gives a retiree 75% of his monthly pay for every year of service. The Complainant was able to get a higher rate equivalent to one (1) month salary for every year of service.**

The Complainant prepared his resignation letter in his own office. His first letter was not accepted by HR Miranda because it gave the impression that he was being directed or ordered to resign. HR Miranda made it clear to him that he is not being ordered to resign as it is his own decision whether to resign or not. The Complainant submitted another resignation letter which was accepted by Respondent-ABB through its Country HR Manager. Thereafter, the Complainant no longer reported for work as his resignation was effective immediately. It was ten (10) days after he submitted his resignation letter that he again met with HR Miranda to get his retirement benefits. The meeting took place outside the company premises**. If, indeed, the resignation of the Complainant was involuntary, he could have easily sought legal counsel or advice right after he left the company premises on 13 March 2012. Instead, he waited for his clearance to be processed and his check prepared. He cannot claim that he was still under duress from March 14 to 22, 2012. The Complainant waited to be given his benefits first, and three (3) days thereafter filed his complaint before this Office. This is hardly the mindset of a person who is not in control of his life.**[40]

---

[40] Emphasis added.

On the other hand, the Court disagrees with the findings of the Labor Arbiter that Doble's resignation was not voluntary based on the following events, to wit: (1) on March 2, 2012, Doble's Performance and Development Approval rating in 2011 is unsatisfactory; (2) there are no prior circumstances that may show his intention to resign; (3) on March 13, 2012, Desai raised the option for him to resign, after explaining that due to the extent of losses and level of discontent among the ranks of the PS Division, the Global and Regional management have demanded for a change in leadership; (4) from the circumstances surrounding his resignation, the option to resign did not originate from Doble but from Desai, whose actuations was not a mere suggestion but a directive or order that was effected on the same day of March 13, 2012; (5) HR Manager Miranda's affidavit clearly show that Doble underwent pressure to resign because starting 11:00 a.m. until 6:00 p.m. of even date, the option to resign was reiterated and repeated until he handed a revised resignation letter; and (6) Doble was not given the opportunity or option to stay in the service.

Even if the option to resign originated from the employer, what is important for resignation to be deemed voluntary is that the employee's intent to relinquish must concur with the overt act of relinquishment. There can be no doubt as to the drastic and shocking nature of the abrupt decision of ABB, Inc. to let Doble resign on March 13, 2012 after almost 19 years of dedicated and satisfactory service, on account of the extent of losses, the level of discontent among the ranks of PS Division, and the ABB, Inc. Global and Regional management's demand for a change in leadership. It bears emphasis, however, that between the start of the conference at around 11:00 a.m. and about eight (8) hours later in the evening when he left the company premises, Doble negotiated for a higher separation pay, *i.e.*, from 75% of the monthly salary for every year of service allowed under the company retirement plan up to double that amount, or 1.5 month's pay for every year of service. In fact, Doble tendered a resignation letter only after being offered a better separation benefit of 1-month pay for every year of service, and even submitted a separate letter expressing his intent

to buy his service vehicle. After considering the acts of Doble before and after his resignation, the Court is convinced of Doble's clear intention to sever his employment with ABB, Inc.

Doble claimed that while inside the conference room at about 2:00 p.m. of March 13, 2012, "he was aware that respondents were actually terminating his services illegally and without due process, that the letter of resignation he was being made to prepare was only a '*palusot*' (to borrow the word of Cong. Fariñas) of respondents (ABB, Inc. and Desai)."[41] Despite being aware of the illegality of his dismissal, Doble submitted a resignation letter and a letter of intent to purchase his service vehicle, allowed Miranda to process his resignation papers, met her outside company premises on March 23, 2012 to sign a waiver and quitclaim and to receive his separation benefits. In view of the lapse of considerable period between his resignation until the execution of a quitclaim and receipt of his separation benefits about ten (10) days later, the Court is inclined to rule that the filing of his complaint for illegal dismissal on March 26, 2012 is a mere afterthought, if not a mere pretention.

Doble further cited the supposed propensity of ABB, Inc. to illegally dismiss its employees, who had filed a complaint for illegal dismissal against the company and were eventually awarded backwages and separation pay. Suffice it to state that Doble failed to prove that he is similarly situated with his co-workers, and that they, likewise, voluntarily executed a resignation letter and a waiver and quitclaim, and received a reasonable separation pay, before filing their respective complaints for illegal dismissal against the company. Instead of presenting copies of final decisions of the labor tribunals to substantiate his claim, Doble merely submitted photocopies[42] of vouchers and checks, showing that his co-workers were paid certain amounts of money on account of their labor cases. Verily, such checks and vouchers are inadequate to prove that he was illegally dismissed and should likewise be awarded monetary claims.

---

[41] *Rollo*, p. 71.

[42] *Id*. at 100-102, Marked as Annexes "I", "J" and "K".

It is curious to note that despite his allegations that "under the extreme pressure and threat of Mrs. Miranda, he went to his office and prepared the letter of resignation"[43] and that "she gave instruction to the security guard of the gate not to allow him to go outside the company,"[44] Doble neither impleaded her as respondent in the complaint for illegal dismissal nor sought to hold her jointly and severally liable, together with the company and its President, for monetary claims and damages. The Court is befuddled that Doble is not prosecuting his claim against HR Manager Miranda, who was the only one who personally dealt with him during the crucial moments before and after his claimed forced resignation on March 13, 2012, as well as facilitated the release of his separation benefits upon his execution of a waiver and quitclaim on March 23, 2012. Accordingly, the Court has no reason to doubt and thus gives more credence to the affidavit of Miranda regarding the circumstances of Doble's voluntary resignation rather than his version of constructive dismissal and forced resignation, which are based on bare and self-serving allegations.

Concededly, under prevailing jurisprudence, a deed of release of quitclaim does not bar an employee from demanding benefits to which he is legally entitled.[45] Employees who received their separation pay are not barred from contesting the legality of their dismissal, and the acceptance of such benefits would not amount to estoppel. The basic reason for this is that such quitclaims and/or complete releases are null and void for being contrary to public policy.

Be that as it may, not all quitclaims are invalid and against public policy. "If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of

---

[43] *Id*. at 30.

[44] *Id*. at 29.

[45] *Sari Sari Group of Companies v. Piglas Kamao,* 583 Phil. 564, 580-581 (2008).

mind. It is only where there is a clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction."[46] Cases abound where the Court gave effect to quitclaims executed by the employees when the employer is able to prove the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or goods customs, or prejudicial to a third person with a right recognized by law.[47] ABB, Inc. and Desai proved by substantial evidence the presence of all these requisites through the following documents: (1) the affidavit of ABB, Inc.'s HR Manager Miranda;[48] (2) the Certificate of Employment;[49] (3) photocopy of Bank of the Philippine Islands manager's check[50] in the amount of ₱2,009,822.72, representing the separation benefit; (4) Employee Final Pay Computation,[51] showing payment of leave credits, rice subsidy and bonuses, amounting to ₱805,399.35; and (5) the Receipt, Release and Quitclaim for a consideration of the total sum of ₱2,815,222.07.[52]

Doble can hardly claim that he was forced to execute the Receipt, Release and Quitclaim on March 23, 2012, because he met Miranda alone outside company premises at McDonalds, Alabang Town Center, Muntinlupa City. He cannot also claim that there was fraud or deceit nor that the consideration for the waiver and quitclaim was unjust and unreasonable. That no

---

[46] *Periquet v. National Labor Relations Commission*, 264 Phil. 1115, 1122 (1990).

[47] *Goodrich Manufacturing Corp. v. Ativo*, 625 Phil. 102, 107 (2010).

[48] *Rollo*, pp. 163-165.

[49] *Id.* at 99.

[50] *Id.* at 128.

[51] *Id.* at 129.

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

portion of his retirement pay will be released or his urgent need for funds does not constitute the pressure or coercion contemplated by law as a valid reason to nullify a quitclaim.[53] While "dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it, the same is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it.[54] As aptly pointed out by the NLRC, Doble is a Vice-President of the company, a highly educated person, *i.e.*, a duly-licensed engineer, who had worked with the company for almost 19 years, and the benefits he received from his resignation in the total amount of ₱2,815,222.07 are undisputedly more than that allowed under the company retirement plan. As a person of high educational attainment and managerial employment stature, Doble is expected to know the import of everything he executes,[55] and cannot be easily duped into signing a quitclaim against his will.

There is also no merit in Doble's contention that the Receipt, Release and Quitclaim is void because it was made to appear that he appeared before a notary public on April 10, 2012 when in fact he already filed an illegal dismissal complaint on March 26, 2012. Regardless of the fact that it was improperly notarized, the said quitclaim is a valid and binding contract between him and ABB, Inc., since the authenticity and due execution thereof is undisputed. Such lack of proper notarization does not render a private document void or without legal effect, but merely exposed the notary public to prosecution for possible violation of notarial laws, as well as the one who caused the same for falsification of public document.

Anent his monetary claims for 13th month pay, yearly bonus of about ₱750,000.00, 15 days vacation leave, 3 days long service

---

[53] *Aujero v. Philippine Communications Satellite Communication*, 679 Phil. 463, 479 (2012).

[54] *Id.*

[55] *AMKOR Technology Philippines, Inc. v. Juangco*, 541 Phil. 312, 316 (2007).

leave, recreational allowance of ₱180,000.00 per year, and rice subsidy of ₱20,400.00, Doble argued that he is entitled thereto in light of the rule that where there is a finding of illegal dismissal, an employee who is unjustly dismissed shall be entitled to reinstatement without loss of seniority rights, benefits and other privileges or its monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement. Suffice it to stress that there being no illegal dismissal in this case, Doble's monetary claims must be denied for lack of legal basis.

Finally, since the Decision of the NLRC finding Doble to have voluntarily resigned is supported by substantial evidence and in accord with law and prevailing jurisprudence, no grave abuse of discretion, amounting to lack or excess of jurisdiction may be imputed against the NLRC for having dismissed his complaint for illegal dismissal against ABB, Inc. and Desai.

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED** for being impressed with merit on procedural issues and **PARTLY DENIED** for lacking merit on substantial issues. Accordingly, the assailed Resolutions dated November 29, 2013 and November 28, 2014 of the Court of Appeals are **REVERSED** and **SET ASIDE**, while the Decision dated June 26, 2013 and Resolution dated August 14, 2013 of the National Labor Relations Commission are **AFFIRMED**.

SO ORDERED.

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

Mendoza, J., on official leave.

Martires, J., on wellness leave.

FIRST DIVISION

[G.R. No. 216063. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARLON SORIANO *y* NARAG,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE APPELLATE COURT, SUSTAINED; NO REASON AT ALL TO OVERTURN SUCH FINDINGS OF FACTS AND CONCLUSIONS OF LAW.—** It is almost trite to say that the factual findings of the trial court, its assessment of the credibility of the witnesses, the probative weight of their testimonies and the conclusions drawn from these factual findings are accorded the highest respect by the appellate court, whose revisory power and authority is limited to the bare and cold records of the case. This explains why this Court, which is not a trial court, is loathe to re-examine and re-evaluate the evidence that had been analyzed and dissected by the trial court, and sustained and affirmed by the appellate court. In the case at bench, we see no reason at all to overturn the findings of facts and the conclusions of law made by both the trial court and the appellate court relative to the fact that treachery or alevosia in fact attended the stabbing-to-death of Perfecto by the appellant at the time and place alleged in the Information.

2. **CRIMINAL LAW; MURDER; CIVIL LIABILITY, MODIFIED.—** The awards for damages can stand some modification, however. Notably, the appellate court awarded ₱25,000.00 as actual damages which is the amount stipulated by the parties. However, it is settled that "only expenses supported by receipts and which appear to have been actually expended in connection with the death of the [victim] may be allowed." Hence, the award of ₱25,000.00 as actual damages is deleted. In lieu thereof, "it is proper to award temperate damages x x x since the heirs of the victim suffered a loss but could not produce documentary evidence to support their claims." In line with

prevailing jurisprudence, we award ₱50,000.00 as temperate damages. As regards the awards for civil indemnity, moral damages and exemplary damages, it was held in *People v. Jugueta* that for a felony like murder where the penalty imposed is death, but reduced to *reclusion perpetua* because of Republic Act No. 9346, the amount is fixed at ₱100,000.00 each for civil indemnity, moral damages, and exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

It must be stated at the outset that appellant Marlon Soriano *y* Narag does not deny that he stabbed to death Perfecto Narag (Perfecto), his 71-year old maternal uncle who was a retired Philippine Army officer, that fateful day of February 9, 2004 at Linao East, Tuguegarao City. Appellant insists nonetheless that he killed Perfecto in legitimate self-defense and that treachery did not attend the killing, hence he could not be convicted of murder.

Factual Antecedents

Appellant was indicted for murder before the Regional Trial Court (RTC) of Tuguegarao City under an Information which states:

That on February 09, 2004, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, accused MARLON SORIANO y NARAG, armed with a bladed weapon, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, stab to death victim PERFECTO NARAG, husband of complainant EDERLINA A. NARAG, inflicting upon him mortal stab wounds which caused his untimely death.

That the crime was committed with the aggravating circumstance[s] of dwelling, and in disregard of the respect due to the offended party on account of his age, being an old man.

Contrary to law.[1]

Arraigned thereon, appellant entered a plea of "not guilty." Trial on the merits ensued.

The prosecution presented the following as witnesses:

Ederlina A. Narag (Ederlina), widow of Perfecto; Villamor Pagulayan (Villamor), a tricycle driver; SPO4 Avelino Guinucay (SPO4 Guinucay) of the Philippine National Police (PNP) of Tuguegarao City; and Dr. Eugenio P. Dayag (Dr. Dayag), former City Health Officer of Tuguegarao City.

Ederlina testified that on the afternoon of February 9, 2004, appellant arrived at their house and asked where her husband Perfecto was. Surprised at his arrival, Ederlina asked appellant why he was looking for Perfecto. Instead of replying to her query, appellant barged into their house and proceeded to Perfecto's room. Seeing that appellant was carrying a bladed weapon, Ederlina shouted to Perfecto to close the door to his room.

While Perfecto was attempting to close the door to his room, appellant grabbed his neck and immediately stabbed him at the right chest while uttering the words "I will kill you." Ederlina tried to stop the appellant from stabbing her husband but he pushed her away and stabbed her instead at the right wrist and forehead. She pleaded with appellant to stop stabbing his uncle, Perfecto, but appellant did not heed her plea. Perfecto also pleaded with him to stop his stabbing frenzy, but he paid no attention to his pleas.

Ederlina narrated that at this point, Villamor, the tricycle driver in their employ, came in and forced appellant out of Perfecto's room. However, appellant was able to return inside the room and stabbed Perfecto at the back again. Ederlina added that after appellant left their house, she saw him and his brother

---

[1] Records, p. 1.

Martin Soriano (Martin) at the street, with appellant himself yelling "Winner."

Corroborating Ederlina's testimony, Villamor testified that he was at the garage of the victim's house when he heard Ederlina's screams. He ran inside the house and saw appellant, Perfecto, and Ederlina inside Perfecto's room. He saw appellant stab Perfecto several times. So he grabbed appellant by the neck and brought him outside the room. But appellant freed himself from his (Villamor's) hold and returned to Perfecto's room and again repeatedly stabbed the latter until he died. Appellant also turned his ire against Villamor and tried to stab him, too, but Villamor succeeded in avoiding serious injury by rushing out of the house. On his way out he ran into Martin, appellant's brother, whom he entreated to help pacify appellant. But Martin instead grabbed Villamor's neck and warned him not to report the incident to the police. However, Villamor broke off from Martin, and went to the police station where he reported the incident.

SPO4 Guinucay testified that he and a fellow police officer went to the scene of the crime to investigate the reported incident. There they found the lifeless Perfecto in a pool of blood, with multiple stab wounds.

Dr. Dayag, testified that he conducted an autopsy upon the 71-year old Perfecto. His autopsy yielded the following results:

Findings:

- Multiple stab wounds, head, chest & back region
- Laceration on the left hand
- Lacerated wound on the left side of the face

Cause of Death:

Severe internal injuries due to multiple stab wounds, head, chest and back region

Dr. Dayag described the injuries, as follows:

- two (2) stab wounds on the forehead:
  1. stab wound measuring .8 inches by 2 inches caused by sharp pointed instrument but non-penetrating;

2. stab wound measuring 1.02 inches by .2 inches deep hitting the skull but non-penetrating caused by a sharp pointed instrument;

- one laceration on the cheek measuring 2 inches wide and 1.2 inches deep caused by sharp bladed instrument;
- three (3) internal hematomas on the chest which were not fatal or more or less, superficial;
- one stab wound just below the nipple measuring 3.2 inches that hit the lungs which could cause internal hemorrhage; inflicted with use of sharp pointed knife; a fatal wound
- a stab wound on the abdomen just at the left umbilicus measuring 1.2 by 3 inches hitting the large and small intestines; non-fatal wound;
- contusions on the abdomen just below the rib; superficial;
- a stab wound caused by a knife on the inguinal area measuring 1.2 inches by 3 inches in thickness; possibly caused by sharp pointed instrument; inflicted injuries to the large intestines and urinary bladder which, if not immediately attended to, would be fatal;
- another stab wound measuring 1.2 inches by 3 inches caused by sharp pointed instrument; inflicted injuries to the large intestines and urinary bladder which, if not immediately attended to, would be fatal
- four (4) stab wounds on the back region:
  1. stab wound measuring 2 by 2.4 inches hitting the lungs; possibly caused by a sharp pointed instrument; fatal wound;
  2. Stab wound measuring 2 x 2.2 inches deep hitting the left kidney; caused by a sharp pointed instrument; fatal wound;
  3. Stab wound measuring 2 inches deep and 2 inches wide; on level with the lumbar area on the left hitting the large intestines; possibly caused by a sharp bladed instrument;
  4. Stab wound measuring 2 inches by 3 inches deep on the right side of the lumbar area hitting the large and small intestines; possibly caused by sharp bladed pointed instrument; non-fatal;

On cross-examination x x x Dr. Dayag [declared] that when he conducted the autopsy, [Perfecto's] cadaver was already [in] *rigos mortis* x x x[; that it] is possible that the wounds [inflicted] on the back of the victim were caused by a chisel[; t]he Autopsy Report does not bear the depths and sizes of the wounds but he had them in his notebook x x x.[2]

---

[2] *Id*. at 259-261.

On the other hand, the appellant claimed that there had been a long-standing bad blood between his (appellant's) family and his now deceased uncle, Perfecto, who was an elder brother of his mother; and that this family feud was caused by Perfecto's desire to deprive appellant's mother of her legitimate share in the common residential compound at Linao East, Tuguegarao City. He claimed that on that fateful day of February 9, 2004, Perfecto went near a store he was tending right inside the common residential compound; that at a distance of about five meters, Perfecto yelled at him to step outside; that when he stepped outside their store, Perfecto swung his knife at him and injured his knee; that he ran inside the kitchen and armed himself with a chisel; that when Perfecto tried to hurt him again, he was able to stab him first; that several persons witnessed the incident but nobody tried to interfere; that after the stabbing incident, he surrendered to *Barangay* Councilman Benigno Lucas who brought him to the police station in Annaturan, Tuguegarao City where he was investigated; and that afterwards, he was brought to a hospital for treatment but said hospital did not issue a medical certificate.

On cross-examination, appellant admitted that Ederlina was present during the stabbing incident in question, and that when Ederlina intervened, she was in fact injured by him; that later, Ederlina filed against him a criminal case for frustrated murder before Branch I of the RTC in Tuguegarao City, to which criminal case he pleaded guilty.

Ruling of the Regional Trial Court

The RTC of Tuguegarao City, Branch 3, synthesized the evidence at bar in this wise:

> The totality of the circumstances leads to the inevitable conclusion that the victim was caught unaware and unable to defend himself and the accused deliberately chose a manner of attack that insured the attainment of his violent intention with no risk to himself.
>
> The fact that Ederlina Narag was able to shout at the victim to close his room does not rule out the presence of treachery. It has been ruled that while a victim may have been warned of possible danger to his person, [there is treachery nonetheless when] the attack

was executed in such a manner as to make it impossible for the victim to retaliate. The case at bar typifies this doctrine for the victim had no opportunity to defend himself precisely because it was simply unexpected to be the subject of an attack right inside his own abode and he was unarmed, with no opportunity to put up a defense. It must also be noted that the victim was already old and that his reflexes could have been worn down by age so he could not have been in a position to swiftly and sufficiently ward off the attack. It is worthy to note the injuries sustained by the victim. According to Dr. Dayag, the victim sustained various injuries not only in front of [his] body but also [on] his forehead and at his back and that the cause of his death is severe internal injuries due to multiple stab wounds, head, chest, and back region.

The version of the accused that the stabbing incident happened outside their house cannot be given credence. First, it is uncorroborated even if accused claimed that there were persons outside their house during the incident. Second, the testimony of prosecution witnesses Villamor Pagulayan and Ederlina Narag that the accused [stab] the victim inside the latter's room was corroborated by SPO4 Avelino Guinucay who testified that he found the victim's body with multiple stabbed wounds lying inside his room [in a] pool of blood. Defense conveniently did not present evidence on what happened to the victim after the stabbing incident that should have explained why the victim's body was found in his room even if the stabbing incident happened outside the house of the accused.

To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination [to commit the crime]; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.

Prosecution evidence [failed] to show when the accused planned to commit the offense and that he reflected on the means to bring about its execution following an appreciable length of time. The Court cannot rest easy in appreciating this aggravating circumstance.

Dwelling aggravates a felony where the crime was committed in the dwelling of the offended party, if the latter has not given provocation or if the victim was killed inside his house. Dwelling is considered aggravating primarily because of the sanctity of privacy

[that] the law accords to [the] human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere. The offense of Murder may be committed without the necessity of trespassing the sanctity of the offended party's house.

The victim was killed not merely in his house but in his own room. The accused could have killed him elsewhere but he decided to commit the crime at the victim's home; thus the aggravating circumstance of dwelling should be appreciated against the accused.

The Court is also convinced that the offense was committed in disregard of the respect due to the age of the victim. The accused knew fully well that the victim was already old because he is his uncle. The accused perpetrated the act against his ageing uncle knowing that by himself, said victim's physical condition due to old age would not allow him to sufficiently defend himself anymore.

The mitigating circumstance of voluntary surrender is appreciated in favor of the accused. Police officer Tangan testified that police officers x x x Remolacio, Batulan and Abadu, who brought accused to PTU Don Domingo where he was on duty informed him that he accused surrendered to Barangay Councilman Benigno Lucas, Linao East, Tuguegarao City. The reason why the accused was no longer at the place of incident when police officer Guinucay investigated and that the accused did not give himself up to any of the police officers was sufficiently explained by the accused upon his testimony that he left the place of incident and proceeded to the barangay hall where he surrendered to Barangay Councilman Benigno Lucas. It is significant to note that there is no evidence to show that the police or any law enforcement agency exerted any effort to locate the accused. By 5:00 o'clock in the afternoon, the accused was already turned over to PTU Don Domingo.

The information alleges two (2) qualifying aggravating circumstances, to wit: treachery and evident premeditation and two (2) generic aggravating circumstances of dwelling and disrespect to the victim who is already old. Only one qualifying circumstance of treachery with the two generic aggravating circumstances were proved. Applying the provision of paragraph 4, Article 64 of the Revised Penal Code, the mitigating circumstance of voluntary surrender offsets one generic aggravating circumstance, thus leaving one more generic aggravating circumstance. Under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, murder is punishable by *reclusion perpetua* to death, which are both indivisible penalties. Article 63

of the same Code provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. Under this state of facts, the proper penalty to be imposed upon the accused should be death.

However, in view of the enactment of Republic Act No. 9346 or the Act Prohibiting the Imposition of Death Penalty on June 24, 2006, the penalty that should be meted is *reclusion perpetua* x x x

x x x x x x x x x

Pursuant to the same law, the accused shall not be eligible for parole x x x.[3]

The dispositive portion of the trial court's Judgment[4] reads as follows:

WHEREFORE, the accused MARLON SORIANO y Narag is found GUILTY beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without possibility of parole. Said accused is ORDERED to pay the heirs of Perfecto Narag the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as stipulated actual damages; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages; and to pay the costs of suit.

SO ORDERED.[5]

Aggrieved, appellant sought recourse before the Court of Appeals.

Ruling of the Court of Appeals

The appellate court however threw out the appellant's appeal ratiocinating as follows:

Testimonies of Prosecution's Witnesses More Credible than Accused-Appellant's

---

[3] *Id.* at 265-267.

[4] *Id.* at 256-268; penned by Judge Marivic A. Cacatian-Beltran.

[5] *Id.* at 268.

It has been held time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect because it had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. On the other hand, the reviewing magistrate has none of the advantages peculiar to the trial judge's position, and could rely only on the cold records of the case and on the judge's discretion. Thus, the trial court's assessment of the credibility of witnesses and their testimonies would not be disturbed absent any showing that it has overlooked, misapprehended or misapplied certain facts or circumstances of weight and substance which could substantially affect the outcome of the case. We assiduously examined the records and We find no reason to either depart from this established doctrine or to review, much less, overturn the factual findings of the court *a quo*.

Marlon tried to destroy the credibility of the prosecution's witnesses by belaboring on their relationship with the victim, Ederlina and Villamor being Perfecto's wife and nephew, respectively. Such emphasis is misplaced. Blood relationship between a witness and the victim does not, by itself, impair the credibility of the witness. In fact, the relationship with the victim would render the testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody [else] other than the real culprit. There is absolutely nothing in our laws to disqualify a person from testifying in a criminal case in which said person's relative was involved, if the former was really at the scene of the crime and was a witness to the execution of the criminal act. Indisputably, Ederlina was with Perfecto in their home when Marlon attacked his uncle. She clearly described the events that took place before, during, and after her husband was stabbed and her testimony remained consistent and unwavering even on cross-examination. Thus, her positive testimony is enough to convict Marlon of the crime charged.

Further, Marlon's claim that the stabbing occurred outside of their respective houses does not inspire belief. We quote with approval the following disquisition of the RTC, *viz*.:

> The version of the accused that the stabbing incident happened outside their house cannot be given credence. First, it is uncorroborated even if accused claimed that there were persons outside their house during the incident. Second, the testimony of prosecution witnesses Villamor Pagulayan and Ederlina Narag

> that the accused stabbed the victim inside the latter's room was corroborated by SPO4 Avelino Guinucay who testified that he found the victim's body with multiple stabbed *(sic)* wounds lying inside his room [in] a pool of blood. Defense conveniently did not present evidence on what happened to the victim after the stabbing incident that should have explained why the victim's body was found in his room even if the stabbing incident happened outside the house of the accused.

There is also no merit in Marlon's contention that his testimony was corroborated by SPO1 Tangan. It bears stressing that SPO1 Tangan did not witness the stabbing incident; his testimony surrounding Perfecto's killing was purely based on Marlon's narration and not of his own personal knowledge. As such, his testimony regarding the killing is inadmissible for being hearsay. It is a basic rule in evidence that a witness can testify [to] the facts that he knows of his own personal knowledge or those which are derived from his own perception. He may not testify [to] what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard.[6]

With particular reference to the qualifying circumstance of treachery, which according to the appellant did not at all attend his stabbing-to-death of his uncle Perfecto, the appellate court postulated thus:

Treachery: Duly Established; Qualified the Killing to Murder

x x x x x x x x x

It may be said, as postulated herein, that the suddenness of the attack would not, by itself, suffice to support a finding of treachery. However, where proof obtains that the victim was completely deprived of a real chance to defend himself against the attack, as in the instant case, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim, the qualifying circumstance of treachery ought to and should be appreciated. Verily, what is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.

As earlier discussed at length, the positive testimony of Ederlina established that Marlon purposely sought the unsuspecting Perfecto

---

[6] CA *rollo*, pp. 129-131.

with intent to inflict mortal wound on him. Perfecto was unarmed at that time and there was no means of escape because he was trapped inside his room. In fact, Perfecto was about to close the door to his room when Marlon suddenly and swiftly stabbed him. Lastly, Marlon aimed at Perfecto's head, chest and back ensuring that he would not have a chance to retaliate. Obviously, the way it was executed made it impossible for the victim to respond or defend himself. He just had no opportunity to repel the sudden attack, rendering him completely helpless.

The following observation of the RTC is also apt:

> The fact that Ederlina Narag was able to shout at the victim to close his room does not rule out the presence of treachery. It has been ruled that while a victim may have been warned of possible danger to his person, in treachery what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate. The case at bar typifies this doctrine for the victim had no opportunity to defend himself precisely because it was simply unexpected to be the subject of an attack right inside his own abode and he was unarmed, with no opportunity to put up a defense. It must also be noted that the victim was already old and that his reflexes could have been worn down by age so he could not have been in a position to swiftly and sufficiently ward off the attack. x x x

Accordingly, We sustain the findings of the RTC that Marlon is guilty beyond reasonable doubt of murder.[7]

The appellate court nonetheless modified the sums awarded by the RTC in concept of actual damages and exemplary damages, to wit:

Damages

However, We find it necessary to modify accused-appellant's civil liability. The RTC correctly awarded ₱75,000.00 civil indemnity and ₱50,000.00 moral damages but the actual damages should be reduced to ₱25,000.00 which is the amount of expenses stipulated by Ederlina in her testimony. The awarded exemplary damages should also be increased to ₱30,000.00 in line with recent jurisprudence.

---

[7] *Id*. at 131-133.

All the foregoing monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this decision until fully paid.[8]

The decretal portion of the appellate court's Decision[9] reads as follows:

WHEREFORE, the appeal is DENIED and the October 30, 2009 Judgment of the Regional Trial Court Branch 3, Tuguegarao City, Cagayan in Criminal Case No. 10121 is AFFIRMED with MODIFICATIONS. As modified, accused-appellant MARLON SORIANO Y NARAG is hereby ordered to pay the Heirs of Perfecto Narag ₱25,000.00 actual damages and ₱30,000.00 exemplary damages, and all monetary awards are subject to 6% per annum from the time of finality of this Decision until fully paid. All other aspects of the October 30, 2009 Judgment stand.

SO ORDERED.[10]

Our Ruling

It is almost trite to say that the factual findings of the trial court, its assessment of the credibility of the witnesses, the probative weight of their testimonies and the conclusions drawn from these factual findings are accorded the highest respect by the appellate court, whose revisory power and authority is limited to the bare and cold records of the case. This explains why this Court, which is not a trial court, is loathe to re-examine and re-evaluate the evidence that had been analyzed and dissected by the trial court, and sustained and affirmed by the appellate court. In the case at bench, we see no reason at all to overturn the findings of facts and the conclusions of law made by both the trial court and the appellate court relative to the fact that treachery or alevosia in fact attended the stabbing-to-death of Perfecto by the appellant at the time and place alleged in the Information.

---

[8] *Id*. at 133.

[9] CA *rollo*, pp. 124-134; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Florito S. Macalino.

[10] *Id*. at 133-134.

The awards for damages can stand some modification, however. Notably, the appellate court awarded ₱25,000.00 as actual damages which is the amount stipulated by the parties.[11] However, it is settled that "only expenses supported by receipts and which appear to have been actually expended in connection with the death of the [victim] may be allowed."[12] Hence, the award of ₱25,000.00 as actual damages is deleted. In lieu thereof, "it is proper to award temperate damages x x x since the heirs of the victim suffered a loss but could not produce documentary evidence to support their claims."[13] In line with prevailing jurisprudence, we award ₱50,000.00 as temperate damages. As regards the awards for civil indemnity, moral damages and exemplary damages, it was held in *People v. Jugueta*[14] that for a felony like murder where the penalty imposed is death, but reduced to *reclusion perpetua* because of Republic Act No. 9346, the amount is fixed at ₱100,000.00 each for civil indemnity, moral damages, and exemplary damages.

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 04241 is **AFFIRMED with MODIFICATIONS**. Appellant Marlon Soriano y Narag is **ORDERED** to pay the heirs of Perfecto Narag the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

---

[11] See TSN, September 5, 2008, p. 4.

[12] *People v. Salibad*, G.R. No. 210616, November 25, 2015, 775 SCRA 566, 584.

[13] *Id.*

[14] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 383.

THIRD DIVISION

[G.R. No. 216937. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TITO AMOC *y* MAMBATALAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS; PRESENT IN CASE AT BAR.—** For a charge of rape under [Article 266-A of the RPC] to prosper, the following elements must be present: (1) accused-appellant had carnal knowledge of AAA; and, (2) he accompanied such act by force, threat or intimidation. The first element of carnal knowledge is present because accused-appellant, in fact, admits that he had carnal knowledge of AAA. The point of contention is whether there was force, or intimidation, or threat in the said act. We find that the evidence on record sufficiently established that the accused-appellant employed force, intimidation and threat in carrying out his sexual advances on AAA. The CA correctly found that the accused-appellant employed force upon the person of AAA.

2. **ID.; ID.; ID.; FAILURE TO SHOUT FOR HELP OR LACK OF RESISTANCE DOES NOT NEGATE RAPE; WHERE THE ACCUSED WAS THE COMMON-LAW SPOUSE OF THE VICTIM'S MOTHER, MORAL ASCENDANCY IS SUBSTITUTED FOR FORCE AND INTIMIDATION.—** [A]ssuming *arguendo* that AAA failed to resist, the same does not necessarily amount to consent to accused-appellant's criminal acts. It is not necessary that actual force or intimidation be employed; as moral influence or ascendancy takes the place of violence or intimidation. Jurisprudence holds that the failure of the victim to shout for help does not negate rape. Even the victim's lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent. In the cases of *People v. Ofemaniano* and *People v. Corpuz*, it has been acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. Considering that accused-appellant was the common-law spouse of AAA's mother, and

as such, he was exercising parental authority over AAA. Indeed, in this case, moral ascendancy is substituted for force and intimidation.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDING IS ENTITLED TO THE HIGHEST RESPECT IN THE ABSENCE OF A CLEAR SHOWING THAT IT OVERLOOKED OR MISAPPLIED SOME FACTS OF WEIGHT AND SUBSTANCE.—** As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.

4. **ID.; ID.; DEFENSES OF DENIAL AND ALIBI; FAILURE OF THE ACCUSED TO ESTABLISH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE PLACE WHEN THE CRIME WAS COMMITTED, HIS DEFENSES OF DENIAL AND ALIBI CANNOT STAND.—** [A]ccused-appellant's defense of denial and alibi cannot stand against the prosecution's evidence. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, he must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Accused-appellant failed in this regard.

5. **ID.; CRIMINAL PROCEDURE; QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY CANNOT BE APPRECIATED WHEN NOT SPECIFICALLY ALLEGED IN THE INFORMATION ALTHOUGH PROVEN DURING TRIAL.—** [T]he Informations alleged that the accused-appellant was the stepfather of AAA. The evidence, however, shows that

the accused-appellant was merely the common-law spouse of AAA's mother, BBB. There was no evidence adduced to prove that accused-appellant was legally married to BBB. Thus, notwithstanding the fact that it was proven during trial that accused-appellant was the common-law spouse of AAA's mother, the same cannot be appreciated as a qualifying circumstance for it was not specifically alleged in the Informations. The circumstances of relationship and minority must be both alleged in the Informations and proved during trial, to be convicted of the crime of qualified rape.

6. **CRIMINAL LAW; RAPE; PROPER PENALTY AND CIVIL LIABILITY.—** The CA properly imposed the penalty of *reclusion perpetua* in conformity with Article 266-B of the RPC. However, to conform to prevailing jurisprudence, We deem it proper to modify the amount of damages awarded in this case. The Court modifies the award of damages as follows: PhP 75,000 as civil indemnity, and PhP 75,000 as moral damages. We note that exemplary damages in the amount of PhP 25,000 was awarded to AAA. In accordance with the case of *People v. Jugueta*, exemplary damages in rape cases are awarded for the inherent bestiality of the act committed, even if no aggravating circumstance attended the commission of the crime, and so We hereby increase the award of exemplary damages to PhP 75,000 for each count of rape.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

TIJAM, *J.*:

Accused-appellant Tito Amoc y Mambatalan challenges before Us the December 9, 2014 Decision of the Court of Appeals (CA)[1], which affirmed his conviction for two counts of rape,

---

[1] Penned by Associate Justice Pablito Perez and concurred in by Associate Justices Edgardo A. Camello and Henri Jean B. Inting, *rollo*, pp. 3-16.

with modification as to the award of damages, rendered against him by the Regional Trial Court (RTC), Branch 2, Tagum City, Davao Del Norte, in its July 23, 2012 Decision.[2]

Accused-appellant was charged with two counts of rape in violation of Article 266-A of the Revised Penal Code (RPC), in two separate Informations, the accusatory portions of which read as follows:

For Criminal Case No. 16705:

That on or about July 12, 2009, in the Municipality of Talaingod, Province f (sic) Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA,[3] his step-daughter, a thirteen (13) year old minor, against her will.

For Criminal Case No. 16961:

That sometime in April 2009, in the Municipality of Talaingod, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, his step-daughter, a thirteen (13) year old minor, against her will.[4]

During arraignment, accused-appellant pleaded not guilty to both accusations. Trial ensued thereafter.

Version of the Prosecution

Prosecution witness and victim AAA narrated her tragic experience which happened in April 2009 at around 6 o'clock in the morning, when she was only thirteen years old. Accused-

---

[2] Penned by Judge Ma. Susana T. Baua, CA *rollo,* pp. 36-40.

[3] In view of the ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, the real name and personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members, are not disclosed in this Decision.

[4] *Rollo,* pp. 3-4.

appellant brought her into their bedroom, took off all her clothes, tied her legs with a rope, undressed himself, and proceeded to have carnal knowledge of her. Accused-appellant covered AAA's mouth to prevent her from asking help. Accused-appellant pointed a knife at her and tried to stab her. AAA could not tell her mother what happened because accused-appellant was always tailing her.[5]

AAA also testified that the second sexual abuse happened on July 12, 2009. Accused-appellant even warned AAA not to say anything about the incident.[6]

AAA's mother, BBB, noticed that AAA's stomach had a slight bulge and conducted a pregnancy test, which yielded a positive result. AAA later on divulged that accused-appellant had been raping her and that he is the father of her baby. AAA gave birth to a baby girl sometime in December 2009.[7]

Accused-appellant admitted that he had sexual congress with AAA but argued that the same was consensual. Accused-appellant claimed that it was an accepted practice among the Ata-Manobo, an indigenous cultural group, to take one's daughter as a second wife.[8]

The RTC found accused-appellant guilty beyond reasonable doubt of two counts of rape in a Decision dated July 23, 2012. Accused-Appellant was sentenced to suffer the penalty of *reclusion perpetua* for each count of rape, and ordered to pay AAA the following indemnity: Php 75,000 as civil indemnity; Php 75,000 as moral damages; and, Php 25,000 as exemplary damages. The dispositive portion of the RTC Decision provides:

> **WHEREFORE,** by his own admission, there being proof beyond reasonable doubt, accused **TITO AMOC Y MAMBATALAN** is

---

[5] CA Decision dated December 9, 2014, *id*. at 4.

[6] *Id*.

[7] *Id*. at 5.

[8] *Id.* at 6.

hereby found **GUILTY** of the rape of AA (sic) as charged in both of the above-entitled cases and is:

1. Sentenced to suffer the penalty of ***reclusion perpetua*** for each count of rape; and

2. Likewise for each count of rape, he is ordered to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

SO ORDERED.[9]

On appeal, the CA in a Decision dated December 9, 2014, affirmed the RTC's Decision with modification as to the award of damages. The awards for civil indemnity and moral damages were decreased to Php 50,000 for each count of rape. The CA Decision's *fallo* reads:

WHEREFORE, the appeal is **DENIED.** The Judgment of the Regional Trial Court of Tagum City, Branch 2, dated 23 July 2012 is **AFFIRMED** with **MODIFICATIONS.**

The award of civil indemnity is decreased to ₱50,000.00 and the award of moral damages is likewise decreased to ₱50,000.00, for each count of rape.

Appellant Tito Amoc is also ordered to support the offspring born as a consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

SO ORDERED.[10]

Hence, this appeal.

Accused-appellant questions the CA Decision and argues the following: 1) that the prosecution failed to prove the element of force and intimidation; and, 2) that his admission of carnal knowledge of AAA does not amount to rape.

---

[9] CA *rollo,* p. 40.

[10] *Rollo,* p. 15.

The appeal lacks merit.

There is no cogent reason to deviate from the CA ruling affirming the RTC's factual finding that the accused-appellant is guilty of two counts of rape. The issues raised are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.[11] None of the exceptions is present in this case.

Even if We consider the factual issues raised, the findings of fact of the RTC and the CA still sufficiently support the conviction of and imposition of the penalty of *reclusion perpetua* on the accused-appellant for the crime of rape against AAA.

Article 266-A of the RPC pertinently reads:

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;

x x x x x x x x x

For a charge of rape under the above-mentioned provision to prosper, the following elements must be present: (1) accused-appellant had carnal knowledge of AAA; and, (2) he accompanied such act by force, threat or intimidation.

The first element of carnal knowledge is present because accused-appellant, in fact, admits that he had carnal knowledge of AAA. The point of contention is whether there was force, or intimidation, or threat in the said act.

We find that the evidence on record sufficiently established that the accused-appellant employed force, intimidation and threat in carrying out his sexual advances on AAA. The CA correctly found that the accused-appellant employed force upon

[11] *People v. Ofemaniano*, G.R. No. 187155, February 1, 2010.

the person of AAA. Accused-appellant tied AAA's legs with a rope, climbed on top of her, and covered her mouth to prevent her from asking for help. Accused-appellant also threatened AAA when he pointed a knife at her and tried to stab her. Clearly, contrary to the accused-appellant's contention, the element of force and intimidation is present in this case.

And even assuming *arguendo* that AAA failed to resist, the same does not necessarily amount to consent to accused-appellant's criminal acts. It is not necessary that actual force or intimidation be employed; as moral influence or ascendancy takes the place of violence or intimidation. Jurisprudence holds that the failure of the victim to shout for help does not negate rape. Even the victim's lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent.[12] In the cases of *People v. Ofemaniano*[13] and *People v. Corpuz,*[14] it has been acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. Considering that accused-appellant was the common-law spouse of AAA's mother, and as such, he was exercising parental authority over AAA. Indeed, in this case, moral ascendancy is substituted for force and intimidation.

As to the alleged inconsistencies in the testimony of AAA (that accused-appellant inserted his penis when AAA's legs were tied together, AAA pressed her hands on the back, and her prior statement that she tried to push him), this can hardly affect the credibility of AAA.

As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and

---

[12] *Id*. at 12.

[13] *Id*.

[14] G.R. No. 175836, January 30, 2009.

deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[15]

It is settled in this jurisdiction that as long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies of minor details and collateral matters do not affect the veracity, or detract from the essential credibility of the witnesses' declarations.[16]

Also, in prosecuting a crime of rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[17]

Moreover, accused-appellant's defense of denial and alibi cannot stand against the prosecution's evidence. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.[18] To merit approbation, he must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[19] Accused-appellant failed in this regard.

Lastly, the Informations alleged that the accused-appellant was the stepfather of AAA. The evidence, however, shows that the accused-appellant was merely the common-law spouse of AAA's mother, BBB. There was no evidence adduced to prove

---

[15] *People v. Burce,* G.R. No. 201732, March 26, 2014.

[16] See *People v. Basbas,* G.R. No. 191068, July 17, 2013.

[17] *People v. Espenilla,* G.R. No. 192253, September 18, 2013.

[18] *People v. Gani*, G.R. No. 195523, June 5, 2013.

[19] See *People v. Jimmy Tabio*, G.R. No. 179477, February 6, 2008.

that accused-appellant was legally married to BBB. Thus, notwithstanding the fact that it was proven during trial that accused-appellant was the common-law spouse of AAA's mother, the same cannot be appreciated as a qualifying circumstance for it was not specifically alleged in the Informations. The circumstances of relationship and minority must be both alleged in the Informations and proved during trial, to be convicted of the crime of qualified rape. Therefore, We find no cogent reason to disturb the findings of the RTC and the CA for the conviction of accused-appellant for two counts of simple rape as they were sufficiently supported by the evidence on record.

The CA properly imposed the penalty of *reclusion perpetua* in conformity with Article 266-B of the RPC. However, to conform to prevailing jurisprudence, We deem it proper to modify the amount of damages awarded in this case. The Court modifies the award of damages as follows: PhP 75,000 as civil indemnity, and PhP 75,000 as moral damages.[20]

We note that exemplary damages in the amount of PhP 25,000 was awarded to AAA. In accordance with the case of *People v. Jugueta*[21], exemplary damages in rape cases are awarded for the inherent bestiality of the act committed, even if no aggravating circumstance attended the commission of the crime, and so We hereby increase the award of exemplary damages to PhP 75,000 for each count of rape.

In addition, all damages awarded shall earn legal interest a the rate of 6% *per annum* from the date of finality of judgment until fully paid.[22]

---

[20] *People vs. Jugueta*, G.R. No. 179477, February 6, 2008.

For Simple rape/Qualified Rape:

x x x x x x x x x

2.1 Where the penalty imposed is *reclusion perpetua,* other than the above-mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

[21] *Id.*

[22] *People v. Sabal*, G.R. No. 201861, June 2, 2014.

WHEREFORE, premises considered, the appeal is **DISMISSED.** The Court of Appeals' Decision dated December 9, 2014, finding accused-appellant Tito Amoc y Mambatalan guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATION.** The civil indemnity, moral damages and exemplary damages awarded are all modified to PhP 75,000. Likewise, the award of damages shall earn interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Reyes,* and *Perlas–Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 216938. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **HENRY BENTAYO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS, PRESENT IN CASE AT BAR; WHEN THE OFFENDER IS THE MINOR VICTIM'S FATHER, MORAL ASCENDANCY OR INFLUENCE SUBSTITUTES FOR VIOLENCE AND INTIMIDATION.—** Under paragraph 1 (a) of Art. 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when

a father commits the odious crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation. Thus, all the elements are present.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES REFERRING TO MINOR DETAILS DO NOT AFFECT THE CREDIBILITY OF THE WITNESS' DECLARATIONS.—** As to appellant's contention that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or do not detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole.

3. **ID.; ID.; ID.; INABILITY OF THE VICTIM TO REMEMBER THE TIME AND DATE WHEN RAPE WAS COMMITTED IS IMMATERIAL.—** Appellant also insists that the inability of AAA to remember the time and date when the crime was committed is detrimental to the case of the prosecution. This Court finds such argument worthless. The date and time of the commission of the crime of rape becomes important only when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction. In other words, the "date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime." Moreover, the date of the commission of the rape is not an essential element of the crime.

4. **ID.; ID.; DEFENSE OF DENIAL AND ALIBI; BARE ASSERTIONS THEREOF CANNOT OVERCOME THE CATEGORICAL TESTIMONY OF THE VICTIM.—** Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.

5. **CRIMINAL LAW; RAPE; PROPER PENALTY AND CIVIL LIABILITY.—** As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* in lieu of death because of its suspension under R.A. No. 9346. As to the award of damages, a modification must be made per *People v. Jugueta*. Where the penalty imposable is death but because of its suspension under R.A. No. 9346, the penalty imposed is *reclusion perpetua*, the amounts of damages shall be as follows: 1) Civil Indemnity – ₱100,000.00 2) Moral Damages – ₱100,000.00 3) Exemplary Damages – ₱100,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

For consideration of this Court is the appeal of the Decision dated November 14, 2014 of the Court of Appeals (*CA*) dismissing appellant Henry Bentayo's appeal and affirming the Judgment dated September 2, 2009 of the Regional Trial Court, Branch 20, Tacurong City in Criminal Case No. 3027, convicting the same appellant of the crime of incestuous rape under Article 266-A, paragraph 1, in relation to Article 266-B of the Revised Penal Code (*RPC*).

The facts follow.

AAA,[1] the victim, was born on November 11, 1991 to spouses BBB and CCC. When AAA was 7 years old, her father died

[1] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 [2006]), wherein this Court resolved to withhold the real names of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims,

and, thereafter, her mother re-married. Her new husband, appellant was then a carpenter and charcoal maker upon whom she had two children. Sometime in the morning of September 27, 2006, the victim's mother CCC told the former to accompany her stepfather, appellant, to the farm at Lagao, Lambayong, Sultan Kudarat to help the latter in making charcoal. Around 10 o'clock in the morning of the same day, appellant and AAA arrived at the farm and, thereafter, appellant told AAA to cook food while appellant was making charcoal. Afterwards, appellant suddenly held the hands of AAA, then covered her mouth, and dragged her. Appellant warned AAA not to shout otherwise he would hack her. AAA tried to resist but was overpowered by appellant's strength. Appellant then laid her on the ground, undressed her, removed her pants and underwear, showed his penis, and masturbated. Thereafter, appellant mounted on top of AAA, spread her legs, inserted his penis into her vagina, and made several coitus movements, all the while oblivious of AAA's pleas.

On November 6, 2007, around 8 o'clock in the evening, appellant raped AAA again at their *kubo* in the farm. While AAA was sleeping, she felt appellant, who was armed with a bolo, touch her face, her breast and then her vagina. Appellant proceeded to undress her, kissed her private parts, and then threatened to kill her if she shouted. Appellant then mounted on top of AAA and inserted his penis into her vagina. Thereafter, appellant further threatened AAA that he will kill her, her mother and her siblings if she told anyone what happened.

---

and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

Cordero, a neighbor of AAA, on November 29, 2007, heard the latter crying, thus, she immediately went to AAA's house to peep inside and saw appellant beating AAA. When Cordero went near the door, appellant stopped beating AAA and immediately went out of the house and walked away. It was then that AAA confided to Cordero that appellant was forcing her to go with him to the farm where appellant intends to rape her again. Cordero relayed the matter to AAA's mother. Cordero, thereafter, accompanied AAA to the police station. The medical examination conducted on AAA showed that she has "old, healed lacerations of vagina at 1 o'clock, 3 o'clock; 5 o'clock; 7 o'clock and 11 o'clock."

Hence, an Information was filed against appellant which reads as follows:

That on or about 8:00 o'clock in the evening of November 6, 2007 inside the "kubo" located at Barangay Lagao, Municipality of Lambayong, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a bolo, with force, threat and intimidation, did then and there, wilfully, unlawfully and feloniously succeed in having carnal knowledge with his stepdaughter AAA, a fifteen (15) year old girl having been born on November 11, 1991 and daughter of CCC, wife of the accused, against her will and consent, which act of the accused debases, degrades the intrinsic worth and dignity of the child as a human being.

CONTRARY TO LAW, particularly Article 266-A paragraph 1 in relation to Article 266-B of the Revised Penal Code of the Philippines and Republic Act No. 7610.

Appellant pleaded not guilty.

Appellant denied the charge against him and insisted that during the time of the alleged incidents, he was in Barangay Lagao, Lambayong, Sultan Kudarat making charcoal; and that he was alone at that time.

The RTC, Branch 20, Tacurong City found appellant guilty beyond reasonable doubt of the crime of incestuous rape and sentenced him to suffer the penalty of *reclusion perpetua.* The

dispositive portion of the Judgment[2] dated September 2, 2009 reads as follows:

> Wherefore, upon all the foregoing considerations, the court FINDS the guilt of accused HENRY BENTAYO y VISTA to the crime of Incestuous Rape beyond reasonable doubt and hereby sentences him to suffer the penalty of reclusion perpetua and to pay the private complainant the following:
>
> a. The amount of ₱75,000.00 as Civil Indemnity;
> b. The amount of ₱50,000.00 as and by way of Moral Damages;
> c. The amount of ₱25,000.00 as and by way of Exemplary Damages
>
> Including their interests at twelve (12%) percent *per annum* computed from April 8, 2008 when the above-entitled case was filed in court and until their full payment.
>
> For being a detention prisoner, the entire period of his preventive imprisonment shall be credited in the service of sentence imposed on him, provided that he shall abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.
>
> Pursuant to Supreme Court Circular No. 4-92-A, the accused shall immediately be transferred to the National Bilibid Prisons in [Muntinlupa] City.
>
> IT IS SO ORDERED.

The CA affirmed[3] the decision of the RTC with modification that appellant must pay AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, and interest on all damages at the rate of six percent (6%) *per annum* from the finality of judgment until fully paid, thus:

> WHEREFORE, the Judgment dated September 2, 2009 of the Regional Trial Court, Branch 20, Tacurong City in Criminal Case

---

[2] Penned by Judge Milanio M. Guerrero; CA *rollo*, pp. 45-62.

[3] Decision dated November 14, 2014, penned by Associate Justice Henri Jean Paul B. Inting, with the concurrence of Associate Justices Edgardo A. Camello and Pablito A. Perez; *rollo*, pp. 3-16.

No. 3027 is hereby AFFIRMED with MODIFICATION. Accused-appellant Henry Bentayo is hereby found GUILTY beyond reasonable doubt of the crime of incestuous rape and is sentenced to suffer the penalty of *reclusion perpetua,* without the benefit of parole.

Further, accused-appellant is ORDERED to pay AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages and interest on all damages at the rate of six percent (6%) *per annum* from the finality of judgment until fully paid.

SO ORDERED.

Hence, the present appeal.

According to appellant, the prosecution was not able to prove his guilt beyond reasonable doubt.

The appeal lacks merit.

Under paragraph 1 (a) of Art. 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[4] Thus, all the elements are present.

In testifying before the trial court, AAA was able to narrate in detail the crime committed, thus:

x x x x x x x x x

Q: I heard from you Miss Witness that you said that Mary Ann would take a statement from you. What was that statement you are referring to?
A: About my father who raped me, sir.

---

[4] *People v. Fragante*, 657 Phil. 577, 592 (2011).

Q: When you say father, you are referring to?
A: My stepfather, sir.

Q: Why, what did your stepfather do to you?
A: He took off my short pants and panty, sir.

Q: Where were you when your stepfather took off your short pants and underwear?
A: At the farm, part of Lagao, your honor.

Q: And when was that if you can recall?
A: I could not remember your honor.

Q: How did it happen that it was in the farm located at Lagao that your stepfather took off your short pants and underwear?
A: Because we were making charcoal there your honor.

x x x x x x x x x

Q: I heard from you Miss Witness that while you were at Lagao together with your stepfather at the *kubo*, he removed your short pants and panty is that correct?
A: Yes, sir.

Q: And what was your reaction when he made that thing to you?
A: I stood up, sir.

Q: Why Miss Witness when he was removing your [short] pants and panty you were then lying?
A: Yes, sir.

x x x x x x x x x

Q: You said [that] you stood up. Why did you stand up when he was removing your short pants and panty?
A: He will kill me if I will not concede to what he wants, sir.

Q: And what does your stepfather want?
A: "*Patyon niya ako kung di ko siya patilawon*," sir.

Q: You said that he would kill you if you will not "*patilawon siya*." What does your stepfather really wants that you will give to him?
A: (no answer)

COURT: You shoot another question.

x x x x x x x x x

Q: And while you were resisting that your short pants and panty could be removed, did you tell something to your stepfather?
A: I told him, do not do it Papa, because I do not want.

COURT: Tell the court what did your stepfather really want from you, which you do not want to give?
A: He will rape me, your honor.

x x x x x x x x x

Q: After he was able to remove your short pants and panty, what did this Henry Bentayo do?
A: He raped me, sir.

COURT: The court cannot understand what does rape mean. Why did your father do when (sic) he removed your short pants and underwear?
A: "*Gin itot*," your honor.

Q: What did your father do that made you say, "*gin itot ka*?"
A: Because he asked your Honor.

COURT: Continue.

Q: How did your father have sexual intercourse with you?
A: He got a piece of wood and he told me that if I will not give he will struck me with that piece of wood, sir.

Q: You said that your father [had] sexual intercourse with you, what was he doing when your short pants and panty was (sic) removed.
A: He took off his short pants and showed his penis, sir.

Q: And after showing his penis, what did he do next?
A: He masturbated, sir.

Q: I heard the word "masturbated," how was it being done?
A: He placed his penis inside my vagina, sir.

COURT: That was after he masturbated?
A: Yes, your honor.

x x x x x x x x x

Q: And what was your reaction then when he entered his penis into your vagina?
A: Painful, sir.

Q: What did you tell him?
A: I told him, "Pang, I could not take it anymore" and he said, "for a while," sir.

COURT: What was your position when your stepfather showed his penis and masturbated the same?
A: I was lying down, your honor.

Q: And what was your position when you said your father inserted his penis into your vagina?
A: My two (2) legs were spread, your honor.

x x x x x x x x x

Q: And how long did your father stay on top of you?
A: Maybe three minutes, sir.

Q: How did you know that it was the penis of your stepfather that was inserted into your vagina?
A: Because I saw it when he inserted his penis inside my vagina, your honor.

x x x x x x x x x

Q: Your stepfather was on top of you while you were lying then. What was his action or movement when your legs were being spread and he was on top of you?
A: (The witness hold her breast [sic] while talking)

Q: What else?
A: He was holding his penis while inserting inside my vagina and pushing it inside, sir.

Q: Was he able to place his penis completely into your vagina?
A: Yes, sir.

Q: While his penis was inside your vagina and on top of you what else was he doing then?

COURT (TO WITNESS): You speak louder so that your stepfather could hear.
A: He was pumping or making a push-and-pull movement, sir.[5]

The clear and straightforward testimony of AAA, as corroborated by the medical findings show beyond reasonable

[5] TSN, November 19, 2008, records, pp. 164-170.

doubt that AAA was raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[6]

As to appellant's contention that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or do not detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole.[7] Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[8]

Appellant also insists that the inability of AAA to remember the time and date when the crime was committed is detrimental to the case of the prosecution. This Court finds such argument worthless. The date and time of the commission of the crime of rape becomes important only when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction.[9] In other words, the "date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime."[10] Moreover, the date of the commission of the rape is not an essential element of the crime.[11]

---

[6] *People v. Estoya*, 700 Phil. 490, 499 (2012), citing *People v. Dizon*, 453 Phil. 858, 883 (2003).

[7] *People v. Laog,* 674 Phil. 444, 463 (2011), citing *People v. Suarez*, 496 Phil. 231, 243 (2005).

[8] *People v. Aguilar*, 565 Phil. 233, 249 (2007).

[9] *People v. Pareja*, 724 Phil. 759, 774 (2014).

[10] *People v. Cantomayor*, 441 Phil. 840, 847 (2002).

[11] *People v. Escultor*, 473 Phil. 717, 727 (2004).

Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[12]

As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* in lieu of death because of its suspension under R.A. No. 9346.[13]

As to the award of damages, a modification must be made per *People v. Jugueta*.[14] Where the penalty imposable is death but because of its suspension under R.A. No. 9346, the penalty imposed is *reclusion perpetua,* the amounts of damages shall be as follows:

1) Civil Indemnity – ₱100,000.00
2) Moral Damages – ₱100,000.00
3) Exemplary Damages – ₱100,000.00

WHEREFORE, the appeal of Henry Bentayo is **DISMISSED** for lack of merit and the Decision dated November 14, 2014 of the Court of Appeals affirming the Judgment dated September 2, 2009 of the Regional Trial Court, Branch 20, Tacurong City in Criminal Case No. 3027, convicting appellant of the crime of incestuous rape defined and penalized under Art. 266-A (1) in relation to Article 266-B of the RPC, as amended by R.A.

---

[12] *People v. Abulon*, 557 Phil. 428, 448 (2007).

[13] Art. 266-B, Revised Penal Code. x x x.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x x x x x x

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

8353 and Republic Act No. 7610, and imposing the penalty of *Reclusion Perpetua* without eligibility for parole under R.A. No. 9346 is **AFFIRMED** with **MODIFICATION** as to the award of damages which shall now be, as follows: civil indemnity in the amount of ₱100,000.00; moral damages in the amount of ₱100,000.00; and exemplary damages in the amount of ₱100,000.00, as ruled by this Court in *People v. Jugueta*,[15] with the appellant paying an interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

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

Mendoza and *Martires, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 216987. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILFREDO PACAYRA *y* MABUTOL**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN IT COMES TO THE ISSUE OF CREDIBILITY OF WITNESSES, FINDINGS OF THE TRIAL COURTS CARRY GREAT WEIGHT AND RESPECT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.—** Central in accused-appellant's arguments in reversing the judgment of conviction is the

---

[15] *Id.*

credibility of AAA's testimony. We find no reason to doubt AAA's testimony. Time and again, We have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the CA.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS OF SIMPLE RAPE AND STATUTORY RAPE.—** The elements of rape under Article 266-A 1(a) of the RPC are: 1) that the offender had carnal knowledge of a woman; and 2) that such act was accomplished through force, threat or intimidation. But when the offender is the victim's father, there need not be actual force, threat or intimidation because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment

and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

3. **ID.; ID.; ID.; ELEMENTS OF QUALIFIED RAPE, SUFFICIENTLY PROVED.—** In the present case, the elements of qualified rape are sufficiently alleged in the four Informations, to wit: a) AAA was still a minor on the day of the alleged rape; and b) accused-appellant is AAA's father. The foregoing elements are also sufficiently proved by the prosecution. That AAA was a minor during the commission of the separate incidents of rape and that accused-appellant is AAA's father were established by AAA's Certificate of Live Birth and accused-appellant's admission before the RTC.

4. **REMEDIAL LAW; EVIDENCE; ACCUSED'S CONTENTION THAT THE VICTIM MERELY FABRICATED THE CHARGE OF RAPE AND THE LATTER'S ILL MOTIVES, REJECTED.—** We reject accused-appellant's contention that AAA merely fabricated the charge of rape because the latter harbored a grudge against accused-appellant due to his strict disciplinary sanctions. It has been held that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her father. Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations, especially a minor, as in this case.

5. **ID.; ID.; VICTIM'S DELAY IN REPORTING THE CRIME CANNOT CAST REASONABLE DOUBT ON THE GUILT OF THE ACCUSED.—** Neither is the Court convinced that AAA's delay in reporting the crime raises doubts as to AAA's motive for filing the case against accused-appellant. The failure to immediately report the dastardly acts to her family or to the authorities at the soonest possible time is not enough reason to cast reasonable doubt on the guilt of the accused-appellant. It has been repeatedly held that, delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against

the victim. In the present case, AAA feared that revealing her father's acts would sow discord within their family and that accused-appellant would kill her if she revealed his crimes. To this Court's mind, there can be no greater source of fear or intimidation than your own father — one who, generally, has exercised authority over your person since birth. Delay brought by fear for one's life cannot be deemed unreasonable.

6. **ID.; ID.; FAILURE TO ESTABLISH THE EXACT DATE WHEN RAPE WAS COMMITTED DOES NOT RESULT IN THE ACQUITTAL OF THE ACCUSED.—** [T]he fact that AAA was uncertain as to the exact date when the rape occurred does not result in the acquittal of the accused-appellant. The Court has repeatedly held that the exact date when the victim was sexually abused is not an essential element of the crime of rape. Indeed, the precise time of the crime has no substantial bearing on its commission. What is decisive in a rape charge is that the commission of the rape by the accused-appellant against the complainant has been sufficiently proven.

7. **ID.; ID.; DEFENSE OF DENIAL AND ALIBI; CANNOT STAND AGAINST THE POSITIVE AND STRAIGHTFORWARD TESTIMONY OF THE VICTIM.—** [A]ccused-appellant's bare denial deserves scant consideration. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. AAA's positive and straightforward testimony that she was raped by accused-appellant deserves greater evidentiary weight than the accused-appellant's uncorroborated defenses.

8. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; PROPER PENALTY FOR FOUR COUNTS OF QUALIFIED RAPE.—** Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the four Informations and that the same were sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of four counts of qualified rape. Thus, the CA is correct in imposing upon the

accused-appellant the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty, pursuant to Section 3 of Republic Act No. 9346, entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

9. **ID.; ID.; ID.; CIVIL LIABILITY.—** We modify the amounts awarded to AAA in view of the recent jurisprudence imposing a minimum amount of Php 100,000 as civil indemnity; Php 100,000 as moral damages; and Php 100,000 as exemplary damages. Hence, We increase the award of civil indemnity from Php 75,000 to Php 100,000; moral damages from Php 75,000 to Php 100,000; and exemplary damages from Php 30,000 to Php 100,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

TIJAM, *J*.:

Accused-appellant Wilfredo Pacayra y Mabutol challenges in this appeal the September 30, 2014 Decision[1] promulgated by the Court of Appeals (CA), Special Eighteenth Division in CA-G.R. CR H.C. No. 01534, which affirmed the judgment of conviction for four counts of Rape rendered against the accused-appellant on August 24, 2012[2] by the Regional Trial Court (RTC), Branch 33 of Calbiga, Samar in Criminal Case Nos. CC-2006-1609, CC-2006-1610, CC-2006-1611, and CC-2006-1612.

The accused-appellant was charged with four counts of Rape under separate Informations, the accusatory portions of which read:

---

[1] Penned by Associate Justice Renato C. Francisco, and concurred in by Associate Justices Gabriel T. Ingles and Jhosep V. Lopez, *rollo*, pp. 4-18.

[2] CA *rollo*, pp. 30-48.

Criminal Case No. CC-2006-1609

That sometime in 2004 at Barangay XXX[3], Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA[4], a 12 year old minor, without her consent and against her will.

Criminal Case No. CC-2006-1610

That on or the 18th day of December 2005, at about 2:00 o'clock in the afternoon, more or less, at Barangay YYY, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, a 13 year old minor, without her consent and against her will.

Criminal Case No. CC-2006-1611

That sometime in 1999 at Barangay XXX, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, then 7 year old minor, without her consent and against her will.

---

[3] The specific barangay where the crime was committed is omitted pursuant to A.M. No. 12-7-15-SC entitled "*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names*."

[4] The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "*Special Protection of Children against Abuse, Exploitation and Discrimination Act*" and A.M. No. 12-7-15-SC entitled "*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names.*"

Criminal Case No. CC-2006-1612

That sometime in 2000 at Barangay XXX, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, then 8 year old minor, without her consent and against her will.[5]

During arraignment, accused-appellant pleaded not guilty.[6] Thereafter, trial ensued.

The pertinent facts of the case, as summarized by the CA, are as follows:

The Version of the Prosecution

Private complainant AAA was born on February 28, 1993 to parents BBB and herein appellant Wilfredo Pacayra.

When AAA was in the first grade and was about seven (7) years old, BBB gave birth to a child named CCC. The family was then living in Bagacay, Hinabangan, Samar. Appellant told AAA to stop going to school so that she can attend to her household chores including taking care of CCC. AAA' siblings (sic) still went to school so that she was often left alone at home taking care of CCC.

One day, AAA was about to change CCC's clothes when appellant suddenly arrived at home, took her hand, placed himself on top of her, and used his weight to immobilize her. BBB called her downstairs and asked her what she and her father were doing upstairs. AAA replied that she was merely changing CCC's diaper and that her father was not doing anything. Appellant then took off AAA's shorts and panties. While on top of her, he also took off his pants, took out his penis and inserted it into her vagina. AAA felt immense pain and kept crying during the entire ordeal. AAA did not tell her mother about appellant's bestial acts for fear that they would quarrel.

The following day, AAA left their house and went to her friend's house. She did not go home until around five o'clock in the afternoon.

---

[5] *Rollo*, pp. 5-6.

[6] CA *rollo*, p. 32.

When she arrived, appellant scolded her and asked her where she went and why she was roaming around when she had to take care of her sibling. Appellant took out a broom and hit her. BBB was not at home at the time since she was out gambling.

Appellant raped AAA a second time less than a year after the first incident and while they were still living in XXX, Samar.

Thereafter, due to the financial difficulties they were facing, appellant decided to bring his family to his mother's house in YYY, Samar.

One evening, while in Calbiga, BBB went out to see a benefit dance. Appellant asked for BBB's whereabouts and upon learning that she was at a benefit dance, ordered AAA to fetch her. When BBB arrived at the house, she and appellant quarrelled after which she went back to the dance and left appellant alone at the house with their children – AAA, DDD and CCC. Once DDD and CCC fell asleep, appellant removed AAA's shorts and panties. Appellant's actions awakened DDD and CCC but he simply kicked DDD and pushed CCC away. Appellant then placed himself on top of AAA and inserted his penis into her vagina. AAA could not bear the pain but she was unable to do anything but cry. AAA did not tell her grandmother about the incident because she was afraid that the latter would quarrel with appellant.

Thereafter, appellant and his family moved to appellant's brother's house which was also in YYY, Samar. At one point during their stay there, appellant was left alone at the house with AAA, DDD and CCC because BBB went to XXX, Samar to attend the town fiesta. Appellant and his three children slept in the same room. That night, appellant told AAA to sleep beside him because it was cold. As AAA was about to go to sleep, appellant suddenly placed himself on top of her, removed her short pants, and inserted his penis into her vagina. Appellant held AAA and used his weight to render her immobile. Afraid that her parents would fight because of her, AAA did not tell her mother about her father's most recent dastardly deeds but she did relate the incidents to her older sister, EEE. However, the latter did not do anything to help her.

AAA eventually told her mother BBB, about the sexual abuse that she suffered at the hands of appellant. However, BBB refused to believe her. She got angry, scolded AAA, and accused her of lying. BBB turned her back on her child and chose to side with appellant.

Sometime in January 2006, AAA went to Gloria Tacad, their neighbor in XXX, Samar, to ask for help. AAA told Tacad that she was being sexually molested by her father. Tacad asked her why she did not immediately report the abuse and AAA replied that it was because she was afraid that appellant would kill her. Tacad brought AAA to the Barangay Captain of XXX, Samar to file a complaint. Afterwards, Tacad took AAA to the office of the Department of Social Welfare and Development (DSWD) in Hinabangan, Samar.

On February 7, 2006, AAA was brought to the Eastern Visayas Regional Center in Tacloban City where she was examined. The medical examination revealed that AAA had incomplete, old hymenal lacerations at 3 and 9 o'clock positions. The attending physician prepared a Medico-Legal Report which states that the physical injuries found on AAA's body were compatible with the alleged date of infliction, i.e., within the last five years.

The Version of the Defense

On the other hand, the appellant interposed the defense of denial.

The defense presented Wilfredo Pacayra (appellant) and Evangelina Alcoy dela Cruz to establish appellant's denial.

Appellant testified that AAA is his daughter and is the fourth child out of his six children. He denied all the charges of rape against him and asserted that it was all made-up by AAA. He claimed that BBB, his wife, directed AAA to file these fabricated cases against him to prevent him from filing a case against BBB who abandoned him. He alleged that BBB left him for another man in 2002. He also insisted that Gloria Tacad lied when she testified that she assisted AAA because Gloria Tacad does not even let her own nephew and niece to come to her house how much more AAA.

Evangelina Alcoy dela Cruz testified that she knew the appellant's family being neighbors in Barangay XXX, Hinabangan, Samar for thirty years. She claimed that she was present when the appellant was arrested by the police authorities who were accompanied by AAA and Mrs. Tacad. During cross examination she testified that she was requested by appellant's wife, BBB, to testify for her husband in his defense.

On August 24, 2012, the RTC convicted accused-apellant of four counts of rape, to wit:

WHEREFORE, premises considered, the Court finds accused **WILFREDO PACAYRA Y MABUTOL GUILTY** beyond reasonable doubt of four (4) counts of Rape defined and penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code.

Accordingly, he is sentenced to suffer the penalty of ***reclusion perpetua*** for each count.

Accused is likewise ordered to indemnify AAA the following:

a. ₱75,000.00 as civil indemnity for each count or a total of ₱300,000.00;

b. ₱50,000.00 as moral damages for each count or a total of ₱200,000.00; and

c. ₱25,000.00 as exemplary damages for each count or a total of ₱100,000.00.

SO ORDERED.[7]

On appeal, the CA affirmed with modifications the decision of the RTC, to wit:

WHEREFORE, the appeal is **DENIED**. The Decision dated August 24, 2012 of the Regional Trial Court, Branch 33, Calbiga, Samar in Crim. Case Nos. CC-2006-1609, CC-2006-1610, CC-2006-1611, and CC-2006-1612 is hereby **AFFIRMED**, finding accused-appellant WILFREDO PACAYRA Y MABUTOL, **GUILTY** beyond reasonable doubt of four (4) counts of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, with **MODIFICATIONS** in that:

a. In Criminal Case No. CC-2006-1609, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of ***reclusion perpetua*** without eligibility for parole and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages.

b. In Criminal Case No. CC-2006-1610, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of ***reclusion perpetua*** without eligibility for parole and ordered to pay AAA the amounts

---

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

of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages.

c. In Criminal Case No. CC-2006-1611, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of ***reclusion perpetua*** without eligibility for parole and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages.

d. In Criminal Case No. CC-2006-1612, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of ***reclusion perpetua*** without eligibility for parole and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, P30,000.00 as exemplary damages.

He is further ordered to pay the victims 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.

SO ORDERED.[8]

Hence, this appeal, with accused-appellant raising this lone assignment of error:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[9]

Accused-appellant alleges that AAA's testimony failed to give specific details as to the alleged rape. AAA only testified that she had been raped four times without providing specific details. Accused-appellant claims that AAA's testimony was vague, indefinite and uncertain as to the dates that she was allegedly raped. Accused-appellant further claims that AAA's failure to confide to her mother or any other person at an earlier time is unnatural and contrary to human experience. As such, it raises doubt as to her motive for filing the cases against her father. Accused-appellant further imputes ill-motive on the part

---

[8] *Rollo*, pp. 17-18.

[9] CA *rollo*, p. 21.

of AAA since the latter may have harbored grudges against the accused-appellant since he imposed strict disciplinary sanctions against AAA, such as making the latter kneel on the floor with salt and striking AAA with a belt.

The appeal lacks merit.

Central in accused-appellant's arguments in reversing the judgment of conviction is the credibility of AAA's testimony. We find no reason to doubt AAA's testimony. Time and again, We have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the CA.[10]

---

[10] *People of the Philippines v. Anastacio Amistoso y Broca*, G.R. No. 201447, January 9, 2013, citing *People v. Aguilar*, G.R. No. 177749, December 17, 2007.

In the present case, both the RTC and the CA found that AAA's testimony was candid, spontaneous, clear, positive and straightforward. We see no cogent reason to depart from the foregoing rule since the accused-appellant failed to demonstrate that the RTC and the CA overlooked, misunderstood or misapplied some facts of weight and substance that would alter the assailed Decision or would affect the result of the case.

Article 266-A of the Revised Penal Code (RPC) provides that Rape is committed:

> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat or intimidation;
> b) When the offended party is deprived of reason or is otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority;
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> x x x x x x x x x

Whereas, Article 266-B of the RPC provides the penalties for the crime of rape:

> ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the instant case, We hold the accused-appellant liable for four counts of Qualified Rape.

The elements of rape under Article 266-A 1(a) of the RPC are: 1) that the offender had carnal knowledge of a woman; and 2) that such act was accomplished through force, threat or intimidation. But when the offender is the victim's father, there need not be actual force, threat or intimidation because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[11] Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[12]

To raise the crime of rape, be it simple rape or statutory rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur.[13]

In the present case, the elements of qualified rape are sufficiently alleged in the four Informations, to wit: a) AAA was still a minor on the day of the alleged rape; and b) accused-appellant is AAA's father. The foregoing elements are also sufficiently proved by the prosecution. That AAA was a minor during the commission of the separate incidents of rape and that accused-appellant is AAA's father were established by

---

[11] *People of the Philippines v. Jose Dalan*, G.R. No. 203086, June 11, 2014.

[12] *People of the Philippines v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

[13] *Id*.

AAA's Certificate of Live Birth[14] and accused-appellant's admission before the RTC.[15]

AAA recounted the ordeal she went through in the hands of accused-appellant in her testimony before the RTC, to wit:

Prosecutor Carmelita M. Naval:

Q: In your personal circumstances, you also mentioned that you are AAA, meaning your surname is AAA. Do you know a certain Wilfredo Pacayra?
A. Yes, ma'am.

Q. How are you related to Wilfredo Pacayra?
A: He is my father, ma'am.

x x x x x x x x x

Q. Where is Wilfredo Pacayra now?
A: He is here, ma'am.

Q. Do you know why he is here in Court?
A: Yes, ma'am.

Q. Can you tell in your own understanding, why he is here in Court?
A:Because he has a case against me, ma'am.

Q. Do you mean to say that you filed a case against your father?
A:Yes, ma'am.

Q. Why? What did your father dio (sic) to you?
A: He raped me, ma'am (the witness is teary-eyed while answering)

Q. Can you tell the Honorable Court how many times did he, according to you, raped (sic) you?
A: Four (4) times, ma'am.

Q. Can you tell when was the first time and if you can remember, how old were you then?
A: I was 7 years old when he first raped me, ma'am.

x x x x x x x x x

[14] Records, pp. 22-25.

[15] See RTC Decision dated August 24, 2012, CA *rollo*, p. 39.

Q. Can you narrate exactly what did your father do to you when you were 7 years old, in your house at XXX, Samar?

x x x x x x x x x

A: The first time when my father did the rape, it was when I was 7 years old at that time in our house in XXX. That time, my mother was pregnant with their last child by the name of CCC. That time, I was about to go to school and my father does not belief (sic) me that I am really attending school. Since my mother was pregnant, he told me to stop schooling so that I can attend to my work at home. When my mother gave birth, that was the time when I took carte (sic) of my younger brother, because that was my usual chore in the house because two (2) of my sisters were going to school, and it was only me and my father who were left in the house. **One time, as I was about to change the clothes of my younger brother, my father arrived and took my hand and immediately, he placed himself on top of me**, and while he was on top of me, my mother downstairs called me but I did not heed her call, but on the fourth time, I answered her and she said: "What are you doing upstairs?" and I said: "I am changing the diaper", and my mother asked: "what is your father doing there"?, and I aswered: "He is doing nothing, he is just here."

Q. Can you more or less illustrate or tell exactly, what your father did to you since you said "my father held my hand and he placed himself on top of me"?
A: **That time when my father was on top of me, he took off my short and my panty, and while he was on top of me, he also took his pants and took out his penis and inserted it to my vagina, since I felt pain, I kept on crying, ma'am.**

x x x x x x x x x

Q. After that, since according to you, you were abused by your father for many times, when was the second time?
A: After that, my father once said to my mother that we go to Calbiga, because that time, our situation was hard, so my father decided to (sic) Calbiga, because he wanted to visit our Lola FFF, the mother of my father. And at that time when we arrived to Calbiga, in the house were my Lola FFF, Uncle GGG, Lola HHH and Auntie III. That time also, my father engaged himself in copra-making in Brgy. YYY, Samar and that time when my Uncle and Auntie were no longer in the house of my Lola FFF, the following day when they left, my father abused me again, ma'am.

Q. What did your father do exactly to you in the house of your Lola FFF?
A: That time when my Auntie and Uncle went back to XXX, in that evening, we were left in the house, me, my father, my brother DDD and my sister BBB. My mother went to see a benefit dance, then my father asked where my mother was, and I said that she went out to see a benefit dance, then my father told me to fetch my mother, and when my mother went back again to the dance. **After that, we were left in the house with my father and my brothers and sister, then my father took off my short and my panty and again my father abused me, that time, my brother was awakened and my father kicked DDD, and since my other younger brother was also awakened, he was also pushed away by my father, ma'am.**

Q. And after that, what else did you (sic) father do to you?
A: **That time when I was abused again by my father and when he placed himself on top of me and placed his penis inside my vagina, because I cannot bear the pain, I just kept on crying, ma'am.**

x x x x x x x x x

Q. Since according to you, you and your family stayed in Brgy. YYY for about four (4) years, after that, where did you and your family go to?
A: We transferred to another house which belongs to the house of the borther (sic) of my father, JJJ, and we stayed there, ma'am.

x x x x x x x x x

Q. And that, your father did not do anything against you anymore when you transferred?
A: I was still raped, ma'am.

Q. How many times?
A: Once, ma'am.

Q. Can you recall the time when your father raped you in the house of JJJ, also in YYY?
A: **During that time, we were only three (3) in the house including my father, and we were sleeping in the same room, and my father asked me if I could sleep beside him, and I said why will I sleep beside you, and my father aswered that I (sic) will sleep beside you (sic) because it is cold. And then, because I was using a blanket, which is my own blanket, my father then was behind it and when**

I was about to sleep, he removed my short pants and then inserted his penis into my vagina, ma'am.

THE COURT:
Q. What you (sic) his position in relation to you when he did that?
A: He was on top of me, your Honor.

Q. Was e(sic) facing you or facing towards the ceiling?
A: He was facing me, your Honor.

x x x x x x x x x

THE COURT:
Q. Why were you not able to do anything?
A: I did not do anything because anyway, I have already taken care of my brothers, your Honor?

Q. You did not wake up your brothers when your father allegedly inserted his penis?
A: I was not able to wake up my brothers because my father was holding my hand at that time, your Honor.

Q. So what if your father was holding your hands?
A: He was heavy and I could no longer move, you Honor.[16]

AAA's foregoing testimony sufficiently established that accused-appellant succeeded in having carnal knowledge of AAA. When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped.[17] When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be

---

[16] TSN, June 11, 2009, pp. 7-11, 13-15 and TSN, July 23, 2009, pp. 3-8, 10, emphasis ours.

[17] *People of the Philippines v. Edilberto Pusing y Tamor*, G.R. No. 208009, July 11, 2016.

compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[18]

For this reason, We reject accused-appellant's contention that AAA merely fabricated the charge of rape because the latter harbored a grudge against accused-appellant due to his strict disciplinary sanctions. It has been held that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her father.[19]

Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations, especially a minor, as in this case.[20]

Neither is the Court convinced that AAA's delay in reporting the crime raises doubts as to AAA's motive for filing the case against accused-appellant. The failure to immediately report the dastardly acts to her family or to the authorities at the soonest possible time is not enough reason to cast reasonable doubt on the guilt of the accused-appellant. It has been repeatedly held that, delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim. In the present case, AAA feared that revealing her father's acts would sow discord within their family and that accused-appellant would kill her if she revealed his crimes.[21] To this Court's mind, there can be no greater source of fear or intimidation than your own father — one who, generally, has exercised authority over your

---

[18] *Id.*

[19] *People of the Philippines v. Ricardo M. Vidaña*, G.R. No. 199210, October 23, 2013.

[20] *Id*.

[21] CA *rollo,* p. 79.

person since birth. Delay brought by fear for one's life cannot be deemed unreasonable.[22]

Further, the fact that AAA was uncertain as to the exact date when the rape occurred does not result in the acquittal of the accused-appellant. The Court has repeatedly held that the exact date when the victim was sexually abused is not an essential element of the crime of rape. Indeed, the precise time of the crime has no substantial bearing on its commission.[23] What is decisive in a rape charge is that the commission of the rape by the accused-appellant against the complainant has been sufficiently proven.[24]

In contrast, accused-appellant's bare denial deserves scant consideration. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[25] AAA's positive and straightforward testimony that she was raped by accused-appellant deserves greater evidentiary weight than the accused-appellant's uncorroborated defenses.

Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the four Informations and that the same were sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of four counts of qualified rape. Thus, the CA is correct in imposing upon the accused-appellant

---

[22] *People of the Philippines v. Oliver A. Buclao*, G.R. No. 208173, June 11, 2014.

[23] *People of the Philippines v. Ernesto Ventura, Sr.*, G.R. No. 205230, March 12, 2014.

[24] *People of the Philippines v. Rey Monticalvo y Magno*, G.R. No. 193507, January 30, 2013.

[25] *Id*.

the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty, pursuant to Section 3[26] of Republic Act No. 9346, entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

However, We modify the amounts awarded to AAA in view of the recent jurisprudence[27] imposing a minimum amount of Php 100,000 as civil indemnity; Php 100,000 as moral damages; and Php 100,000 as exemplary damages.

Hence, We increase the award of civil indemnity from Php 75,000 to Php 100,000; moral damages from Php 75,000 to Php 100,000; and exemplary damages from Php 30,000 to Php 100,000.

WHEREFORE, the foregoing considered, the appeal is **DISMISSED**. The Court of Appeals' Decision dated September 30, 2014 in CA-G.R. CR-H.C. No. 01534 finding WILFREDO PACAYRA Y MABUTOL guilty beyond reasonable doubt of four counts of Qualified rape and sentencing him to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for each count of Qualified Rape is **AFFIRMED WITH MODIFICATIONS** that: (a) the award of civil indemnity, moral damages and exemplary damages are increased to One Hundred Thousand Pesos (₱100,000.00) for each count of Qualified Rape; and (b) interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), *Leonardo-de Castro, Bersamin,* and *Reyes, JJ.,* concur.

---

[26] Sec. 3. Persons convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[27] *People v. Gamboa*, G.R. No. 172707, October 1, 2013 and *People of the Philippines v. Edilberto Pusing y Tamor, supra* note 17.

FIRST DIVISION

[G.R. No. 217730. June 5, 2017]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **ARJAN T. HASSARAM,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); RETIREMENT BENEFITS; THE AMOUNT RECEIVED BY RESPONDENT MUST BE CONSIDERED PART OF HIS RETIREMENT PAY PURSUANT TO THE SUBJECT PILOT'S RETIREMENT PLAN.—** It is clear from the provisions of the Plan that it is the company that contributes to a "retirement fund" for the account of the pilots. These contributions comprise the benefits received by the latter upon retirement, separation from service, or disability. In *Philippine Airlines, Inc. v. Airline Pilots Association of the Phils.*, the Court utilized these provisions to explain the nature of the Plan: **The *PAL Pilots' Retirement Benefit Plan* is a retirement fund raised from contributions exclusively from [PAL] of amounts equivalent to 20% of each pilot's gross monthly pay.** Upon retirement, each pilot stands to receive the full amount of the contribution. x x x Considering that the very same retirement plan is involved in this petition, we adopt the pronouncements in the above cases. We therefore rule that the amount of ₱4,456,817.75 received by Hassaram from the PAL Plan formed part of his retirement pay.
2. **ID.; ID.; ID.; ID.; RESPONDENT'S RETIREMENT PAY SHOULD BE COMPUTED ON THE BASIS OF PETITIONER'S RETIREMENT PLANS AND NOT ON ARTICLE 287 OF THE LABOR CODE.—** It is clear from the records that Hassaram is a member of ALPAP and as such, is entitled to benefits from both the retirement plans under the 1967 PAL-ALPAP CBA and the Plan. Parenthetically, we note the declaration of the CA that the agreement had already expired two years before Hassaram's claim. This declaration appears to be inaccurate, as the RTC and the CA themselves declared

that the CBA expired only on 31 December 2000, while Hassaram had applied for retirement earlier, on 31 August 2000. The provisions of the CBA are therefore applicable as they would allow Hassaram to claim the following benefits under two separate plans provided under the CBA: (a) the amount of ₱5,000 for every year of service under the PAL-ALPAP Retirement Plan; and (b) an equity equivalent to 240% of his gross monthly salary for every year of employment pursuant to the Plan. In contrast, Article 287 would entitle a retiring pilot to the equivalent of only 22.5 days of his monthly salary for every year of service. This scheme was thus considered by the Court as inferior to the retirement plans granted by PAL to the latter's pilots in *Elegir* and PAL[.] x x x Following the above pronouncement, we therefore declare that Hassaram's retirement benefits must be computed based on the retirement plans of PAL, and not on Article 287 of the Labor Code.

APPEARANCES OF COUNSEL

PAL Legal Affairs Department for petitioner.
Castro Canilao & Associates for respondent.

D E C I S I O N

SERENO, *C.J.*:

This resolves the Petition for Review[1] filed by Philippine Airlines, Inc. (PAL), which prays for the reversal of the Court of Appeals (CA) Decision[2] and Resolution[3] in CA-G.R. SP No. 128970. The CA declared that respondent Arjan T. Hassaram (Hassaram), a former PAL pilot, was entitled to receive retirement benefits from PAL under Article 287 of the Labor Code,

---

[1] *Rollo*, pp. 37-64; Petition for Review under Rule 45 of the Rules of Court.

[2] *Id*. at 66-79; Decision dated 25 September 2014 penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz.

[3] *Id*. at 81-82; Resolution dated 23 March 2015.

notwithstanding his earlier receipt of ₱4,456,817.75 under the PAL Pilots' Retirement Benefit Plan (the Plan).

The case stemmed from a Complaint[4] filed by Hassaram against PAL for illegal dismissal and the payment of retirement benefits, damages, and attorney's fees. He claimed that he had applied for retirement from PAL in August 2000 after rendering 24 years of service as a pilot, but that his application was denied. Instead, PAL informed him that he had lost his employment in the company as of 9 June 1998, in view of his failure to comply with the Return to Work Order issued by the Secretary of Labor against members of the Airline Pilots Association of the Philippines (ALPAP) on 7 June 1998.[5]

Before the Labor Arbiter (LA),[6] Hassaram argued that he was not covered by the Secretary's Return to Work Order; hence, PAL had no valid ground for his dismissal.[7] He asserted that on 9 June 1998, he was already on his way to Taipei to report for work at Eva Air, pursuant to a four-year contract approved by PAL itself.[8] Petitioner further claimed that his arrangement with PAL allowed him to go on leave without pay while working for Eva Air, with the right to accrue seniority and retire from PAL during the period of his leave.[9]

In its Position Paper, PAL contended that (a) the LA had no jurisdiction over the case, which was a mere off-shoot of ALPAP's strike, a matter over which the Secretary of Labor had already assumed jurisdiction; (b) the Complaint should be considered barred by *res judicata*, forum shopping, and prescription; (c) the case should be suspended while PAL was under receivership; and (d) if at all, Hassaram was entitled only

---

[4] *Id*. at 84-85.

[5] *Id*. at 88, 106.

[6] See Hassaram's Position Paper, *rollo*, pp. 86-99.

[7] *Id*. at 89-90.

[8] *Id*.

[9] *Id.* at 90-91, 100.

to retirement benefits of ₱5,000 for every year of service pursuant to the Collective Bargaining Agreement (CBA) between PAL and ALPAP.

THE RULING OF THE LA

In a Decision dated 17 February 2004,[10] the LA awarded retirement benefits and attorney's fees to Hassaram. The former explained that Hassaram did not defy the Return to Work Order, as he was in fact already on leave when the order was implemented.[11] As to the computation of benefits, the LA ruled that Article 287 of the Labor Code should be applied, since the statute provided better benefits than the PAL-ALPAP CBA.[12] Hassaram's other claims, on the other hand, were dismissed.[13]

THE NLRC RULING

PAL appealed the LA's Decision to the NLRC.[14] Aside from reiterating its arguments on lack of jurisdiction, *res judicata*, and prescription, PAL contended that Hassaram was not entitled to retirement benefits, because he had earlier been terminated from employment for defying the Return to Work Order.[15] It further claimed that the LA's Decision contradicted the ruling in *PAL v. ALPAP*,[16] in which this Court awarded retirement benefits to qualified PAL pilots under the company's own retirement plans, instead of the Labor Code.[17]

The NLRC initially affirmed the LA's Decision to award retirement benefits to Hassaram under Article 287 of the Labor

---

[10] *Id.* at 374-391; penned by Labor Arbiter Gaudencio P. Demaisip, Jr.

[11] *Id*. at 387.

[12] *Id*. at 388-390.

[13] *Id*. at 391.

[14] *Id*. at 393-422.

[15] *Id.* at 404.

[16] 424 Phil. 356 (2002).

[17] *Rollo*, p. 404.

Code.[18] This affirmation prompted PAL to seek reconsideration of the ruling[19] citing, for the first time, Hassaram's purported receipt of retirement benefits in the amount of ₱4,456,817.75 pursuant to the Plan.[20] PAL likewise alleged that, as a consequence of this newly discovered payment, any claim made by Hassaram for retirement benefits should be deemed extinguished.[21]

The NLRC granted PAL's Motion for Reconsideration.[22] Reversing its earlier Decision, it set aside the ruling of the LA on account of Hassaram's receipt of retirement benefits under the Plan.[23] This payment, according to the NLRC, was sufficient to discharge his claim for retirement pay.[24]

Hassaram sought reconsideration[25] of the NLRC Resolution, but his motion was denied. He then elevated the matter to the CA via a Petition for Certiorari.[26]

THE CA RULING

Before the CA, Hassaram asserted that the NLRC acted with grave abuse of discretion amounting to lack of jurisdiction when the latter reversed its previous ruling and set aside the Decision of the LA.[27] While admitting that he received ₱4,456,817.75 under the Plan, he maintained that his receipt of that sum did not preclude him from claiming retirement benefits from PAL,

---

[18] See Decision dated 30 January 2012, *rollo*, pp. 480-492.

[19] *Rollo*, pp. 495-503.

[20] *Id*. at 496-498.

[21] *Id*. at 498-499.

[22] Resolution dated 26 September 2012, *rollo*, pp. 528-535.

[23] *Id*. at 532-533.

[24] *Id.*

[25] *Id*. at 537-545; Motion for Reconsideration dated 16 October 2012.

[26] *Id*. at 551-569; Petition dated 6 March 2013.

[27] *Id.* at 558-559.

since that amount represented only a return of his share in a distinct and separate provident fund established for PAL pilots.[28]

In a Comment[29] filed before the CA, PAL belied Hassaram's claims. Citing *PAL v. ALPAP*,[30] it asserted that the Plan was a retirement fund it "wholly financed"; consequently, the payment Hassaram received therefrom should be considered part of his retirement pay.

On 25 September 2014, the CA issued the assailed Decision[31] reversing the NLRC and reinstating the ruling of the LA. The appellate court declared that the funds received under the Plan were not the retirement benefits contemplated by law.[32] Hence, it ruled that Hassaram was still entitled to receive retirement benefits in the amount of ₱2,111,984.60 pursuant to Article 287 of the Labor Code.[33]

PAL sought reconsideration of the ruling,[34] but its motion was denied.[35]

PROCEEDINGS BEFORE THIS COURT

In its Petition for Review before this Court, PAL no longer questions the entitlement of Hassaram to retirement benefits.[36] Its only contention is that the CA erred in declaring that his benefits should be computed on the basis of Article 287 of the Labor Code. PAL asserts, instead, that its own company retirement plans—both the PAL Pilots' Retirement Benefit

---

[28] *Id*. at 561-564.

[29] *Id*. at 721-736; Comment dated 11 January 2014.

[30] *Supra* note 16.

[31] Decision dated 25 September 2014, *supra* note 2.

[32] *Id.* at 76-77.

[33] *Id*. at 77-78.

[34] Motion for Reconsideration (of the Decision dated September 2014), *rollo*, pp. 774-783.

[35] Resolution dated 23 March 2015, *supra* note 3.

[36] *Id*. at 48.

Plan[37]and the 1967 PAL-ALPAP Retirement Plan[38] — should have been applied to determine Hassaram's retirement benefits.

In his Comment,[39] Hassaram insists that the sum he received from the Plan was a benefit separate from that provided under Article 287 of the Labor Code. He reiterates that his receipt of ₱4,456,817.75 from the Plan does not preclude him from claiming his retirement pay under the statute, because those benefits he obtained were supposedly meant to reward him for his loyalty and service to PAL.[40] He likewise asserts that the Plan was not truly a retirement plan, but a provident fund "set up for the benefit of the pilots-members by way of saving a portion of their salary [forced savings]." Underlying the Plan, he said, was the understanding that their shares in the fund would be returned upon retirement, disability or unemployment.[41]

ISSUES

The following issues are presented for resolution in this case:

1. Whether the amount received by Hassaram under the Plan should be deemed part of his retirement pay

---

[37] *Rollo*, pp. 737-748.

[38] The 1967 PAL-ALPAP Retirement Plan (*rollo*, p. 271) states:

SECTION 1. Normal Retirement. (a) Any member who completed twenty (20) years of service as a pilot for PAL or has flown 20,000 hours for PAL be eligible for normal retirement. The normal retirement date is the date on which he completes twenty (20) years of service, or on which he logs his 20,000 hours as a pilot for PAL. The member who retires on his normal retirement shall be entitled to either (a) a lump sum payment of ₱100,000.00 or (b) to such termination pay benefits to which he may be entitled to under existing laws, whichever is the greater amounts.

SECTION 2. Late Retirement. Any member who remains in the service of the Company after his normal retirement date may retire either at his option or at the option of the Company and when so retired he shall be entitled either (a) to a lump sum payment of ₱5,000.00 for each completed year of service rendered as a pilot, or (b) to such termination pay benefits to which he may be entitled under existing laws, whichever is the greater amount.

[39] Comment filed on 28 April 2016, *rollo*, pp. 804-809.

[40] *Id*. at 805.

[41] *Id*. at 805-807.

2. Whether Hassaram is entitled to receive retirement benefits under Article 287 of the Labor Code

OUR RULING

We **GRANT** the Petition.

Pursuant to the Decisions of this Court in *Elegir v. PAL*[42] and *PAL v. ALPAP*,[43] the amount received by Hassaram under the Plan must be considered part of his retirement pay. Combined with the retirement benefits under the CBA between PAL and ALPAP, this scheme would allow Hassaram to receive superior retirement benefits, thereby rendering Article 287 of the Labor Code inapplicable.

The amount received by Hassaram under the PAL Pilots' Retirement Benefit Plan must be considered part of his retirement pay.

The threshold question before this Court concerns the proper characterization of the sum of ₱4,456,817.75 received by Hassaram from the Plan. For its part, PAL avers that this amount formed part of Hassaram's retirement pay, because the Plan was a retirement fund wholly financed by the company. Hassaram, on the other hand, insists that the amount he received from the Plan represented only a return of his share in a distinct and separate provident fund established for PAL pilots.

We rule for petitioner.

It is clear from the provisions of the Plan that it is the company that contributes to a "retirement fund" for the account of the pilots.[44] These contributions comprise the benefits received by

---

[42] 691 Phil. 58 (2012).

[43] *Supra* note 16.

[44] Article II, Section 12 of the Plan, states:

Section 12. "Retirement Fund" shall mean the Company's contributions to the Trust Fund established under or in connection with this Plan in the Participants' behalf plus/minus earnings/losses and less expenses charged to the Fund and benefit payments previously made. The Retirement Fund consist of the participants' equity and forfeitures:

the latter upon retirement, separation from service, or disability.[45] In *Philippine Airlines, Inc. v. Airline Pilots Association of the Phils.*,[46] the Court utilized these provisions to explain the nature of the Plan:

> **The PAL Pilots' Retirement Benefit Plan is a retirement fund raised from contributions exclusively from [PAL] of amounts equivalent to 20% of each pilot's gross monthly pay.** Upon retirement, each pilot stands to receive the full amount of the contribution. In sum, therefore, the pilot gets an amount equivalent to 240% of his gross monthly income for every year of service he rendered to petitioner. This is in addition to the amount of not less than ₱100,000.00 that he shall receive under the 1967 Retirement Plan.[47] (Emphasis supplied and citations omitted)

Based on the foregoing characterization, the Court included the amount received from the Plan in the computation of the retirement pay of the pilot involved in that case. The same rule was later applied to *Elegir v. Philippine Airlines, Inc.*:[48]

> Consistent with the purpose of the law, the CA correctly ruled for the computation of the petitioner's retirement benefits based on the two (2)

2.12.1. "Participant's Equity in the Retirement Fund" shall mean the Company's contributions to the Retirement Fund for account of the Participant, plus/minus the proportionate share of investment earnings/losses less proportionate share of expenses charged to the Retirement Fund. 2.12.2. "Forfeitures" shall mean that portion of a former participant's equity which has been retained in the Fund and has not yet been applied to the reduction of the Company's contributions to the Fund pursuant to Article X of this Plan.

[45] Article I, Section 2 of the Plan, provides:

Section 2. Objective. The object of this Plan is to provide through a Retirement Fund to be established by the COMPANY, for the payment of definite amounts to its pilots or participants as defined in Article II, when they are disabled by accident or sickness or are separated or retired from the service and, in the event of death, the payment of definite ascertainable amounts to their lawful heir or heirs, subject to the conditions and limitations hereinafter set forth.

[46] 424 Phil. 356 (2002).

[47] *Id*. at 363.

[48] *Supra* note 42.

PAL retirement plans because it is under the same that he will reap the most benefits. Under the PAL-ALPAP Retirement Plan, the petitioner, who qualified for late retirement after rendering more than twenty (20) years of service as a pilot, is entitled to a lump sum payment of ₱125,000.00 for his twenty-five (25) years of service to PAL. xxx.

x x x x x x x x x

Apart from the abovementioned benefit, the petitioner is also entitled to the equity of the retirement fund under PAL Pilots' Retirement Benefit Plan, which pertains to the retirement fund raised from contributions exclusively from PAL of amounts equivalent to 20% of each pilot's gross monthly pay. Each pilot stands to receive the full amount of the contribution upon his retirement which is equivalent to 240% of his gross monthly income for every year of service he rendered to PAL. This is in addition to the amount of not less than ₱100,000.00 that he shall receive under the PAL-ALPAP Retirement Plan. (Emphasis supplied and citations omitted)

Considering that the very same retirement plan is involved in this petition, we adopt the pronouncements in the above cases. We therefore rule that the amount of ₱4,456,817.75 received by Hassaram from the PAL Plan formed part of his retirement pay.

Hassaram's retirement pay should be computed on the basis of the retirement plans provided by PAL.

Bearing in mind our conclusion that the sum received by Hassaram from the Plan formed part of his retirement pay, we now proceed to determine whether his retirement pay must be computed on the basis of Article 287, or on the retirement plans provided by PAL.

We first examine Article 287 of the Labor Code, which provides in relevant part:

Art. 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements:

Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Interpreting the language of this provision, we declared in *Elegir* as follows:[49]

It can be clearly inferred from the language of the foregoing provision that it is **applicable only to a situation where (1) there is no CBA or other applicable employment contract providing for retirement benefits for an employee, or (2) there is a CBA or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law.** The rationale for the first situation is to prevent the absurd situation where an employee, deserving to receive retirement benefits, is denied them through the nefarious scheme of employers to deprive employees of the benefits due them under existing labor laws. On the other hand, the second situation aims to prevent private contracts from derogating from the public law.

x x x x x x x x x

Emphasis must be placed on the fact that the purpose of the amendment is not merely to establish precedence in application or accord blanket priority to existing CBAs in computing retirement benefits. The determining factor in choosing which retirement scheme to apply is still superiority in terms of benefits provided. Thus, even if there is an existing CBA but the same does not provide for retirement benefits equal or superior to that which is provided under Article 287 of the Labor Code, the latter will apply. In this manner, the

---

[49] *Supra* note 42.

employee can be assured of a reasonable amount of retirement pay for his sustenance.[50] (Emphasis supplied)

In the assailed Decision and Resolution, the CA declared that Hassaram was entitled to retirement benefits under Article 287, because the benefits provided under that provision were supposedly superior to those granted to him under the PAL retirement plans.

We disagree.

It is clear from the records that Hassaram is a member of ALPAP and as such, is entitled to benefits from both the retirement plans under the 1967 PAL-ALPAP CBA and the Plan.[51]

Parenthetically, we note the declaration of the CA that the agreement had already expired two years before Hassaram's claim.[52] This declaration appears to be inaccurate, as the RTC and the CA themselves declared that the CBA expired only on 31 December 2000,[53] while Hassaram had applied for retirement earlier, on 31 August 2000.[54] The provisions of the CBA are therefore applicable as they would allow Hassaram to claim the following benefits under two separate plans provided under the CBA: (a) the amount of ₱5,000 for every year of service under the PAL-ALPAP Retirement Plan; and (b) an equity equivalent to 240% of his gross monthly salary for every year of employment pursuant to the Plan.

In contrast, Article 287 would entitle a retiring pilot to the equivalent of only 22.5 days of his monthly salary for every year of service. This scheme was thus considered by the Court as inferior to the retirement plans granted by PAL to the latter's pilots in *Elegir* and *PAL*:

---

[50] *Id.* at 71.

[52] *See* Section 2 of the 1967 PAL-ALPAP Retirement Plan, *supra* note 38.

[52] *See* Decision dated 25 September 2014, *supra* note 2 at 77.

[53] *Id*. at 68; also *see* PAL's Position Paper, *rollo*, pp. 108-129, 109.

[54] *Id*. at 67; also *see* Complainant's Position Paper, *rollo*, pp. 86-99, 87.

In sum, therefore, the petitioner will receive the following retirement benefits:

(1) ₱125,000.00 (25 years x ₱5,000.00) for his 25 years of service to PAL under the PAL-ALPAP Retirement Plan, and;

(2) 240% of his gross monthly salary for every year of his employment or, more specifically, the summation of PAL's monthly contribution of an amount equivalent to 20% of his actual monthly salary, under the PAL Pilots' Retirement Benefit Plan.

x x x x x x x x x

On the other hand, under Article 287 of the Labor Code, the petitioner would only be receiving a retirement pay equivalent to at least one-half (1/2) of his monthly salary for every year of service, a fraction of at least six (6) months being considered as one whole year. **To stress, one- half (1/2) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave.**

Comparing the benefits under the two (2) retirement schemes, it can readily be perceived that the 22.5 days worth of salary for every year of service provided under Article 287 of the Labor Code cannot match the 240% of salary or almost two and a half worth of monthly salary per year of service provided under the PAL Pilots' Retirement Benefit Plan, which will be further added to the ₱125,000.00 to which the petitioner is entitled under the PAL-ALPAP Retirement Plan. Clearly then, it is to the petitioner's advantage that PAL's retirement plans were applied in the computation of his retirement benefits.[55] (Emphasis supplied and citations omitted)

Following the above pronouncement, we therefore declare that Hassaram's retirement benefits must be computed based on the retirement plans of PAL, and not on Article 287 of the Labor Code.

In view of the undisputed fact that Hassaram has received his benefits under the Plan,[56] he is now entitled to claim only his remaining benefits under the CBA, i.e. the amount of

---

[55] *Elegir v. Philippine Airlines, Inc.*, *supra* note 42, at 72-74.

[56] See Acknowledgment Receipt dated 15 November 2000, *rollo*, p. 516.

₱120,000 (24 years x ₱5,000) for his 24 years of service to the company.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The CA Decision and Resolution dated 25 September 2014 and 23 March 2015, respectively, are **SET ASIDE**. Petitioner Philippine Airlines, Inc., is hereby **ORDERED** to **PAY** respondent Arjan T. Hassaram the amount of ₱120,000 representing the balance of his retirement pay, computed based on the 1967 PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 218114. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SALVADOR AYCARDO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT IN CASE OF VARIANCE BETWEEN ALLEGATION AND PROOF; WHERE THE ACCUSED CANNOT BE CONVICTED OF THE CHARGE OF RAPE, HE CAN STILL BE CONVICTED OF THE LESSER CRIME OF ACTS OF LASCIVIOUSNESS.—** With respect to Criminal Case No. FC-08-0272, both the RTC and the CA ruled correctly that Aycardo cannot be convicted of the charge of rape by sexual

assault, as he was unable to insert his finger inside AAA's vagina, but he can still be convicted of acts of lasciviousness because its elements are necessarily included in the offense charged, and were proved in court. The rulings of the RTC and the CA are consistent with Section 4, in relation to Section 5, of Rule 120 of the Rules on Criminal Procedure which provide for the "variance doctrine[.]" x x x Applying the variance doctrine to this case, Aycardo, who was charged with one (1) count of rape by sexual assault, can still be convicted of acts of lasciviousness under Section 5(b), Article III of R.A. No. 7610 even though he was unable to insert his finger into the victim's vagina, because the prosecution has proved that he intentionally touched the same – an act which is deemed a lascivious conduct.

2. **CRIMINAL LAW; REVISED PENAL CODE (RPC) *VIS-À-VIS* REPUBLIC ACT NO. (RA) 7610; ACTS OF LASCIVIOUSNESS; ALL THE ELEMENTS OF ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC IN RELATION TO SECTION 5(b) OF RA 7610 ARE PRESENT.—** Article III of R.A. No. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse. However, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610. x x x As correctly found by the CA, all the elements of acts of lasciviousness under Article 336 of the RPC, as amended, in relation to Section 5(b), Article III of R.A. No. 7610, are present in Criminal Case No. 08-0272 because the evidence of the prosecution showed that Aycardo, an adult, took advantage of his influence as the uncle and a relative by affinity within the 3rd civil degree of AAA, and was able to touch her vagina, while he forcibly removed her shorts and panties[.]

3. **ID.; ID.; ID.; PROPER PENALTY.—** Aycardo is sentenced to suffer the indeterminate penalty of Twelve (12) years and One (1) day of *reclusion temporal* minimum, as minimum, to Sixteen

(16) years, Five (5) months and Ten (10) days of *reclusion temporal* medium in its maximum period, as maximum. x x x [R]elationship of the offender with the child victim can be considered as an aggravating circumstance for purposes of increasing the period of imposable penalty for acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

4. **ID.; ID.; ID.; CIVIL LIABILITY.—** On the matter of Aycardo's civil liabilities for acts of lasciviousness, the CA properly awarded AAA civil indemnity in the amount of ₱20,000.00 and moral damages in the amount of ₱15,000.00, but exemplary damages in the amount of ₱15,000.00 should also be awarded, in line with current jurisprudence. A fine in the amount of ₱15,000.00 is likewise imposed against Aycardo in accordance with Section 31(f), Article XII of R.A. No. 7610.

5. **ID.; RPC AS AMENDED BY RA 8353; STATUTORY RAPE; THE ONLY SUBJECT OF INQUIRY IS THE AGE OF THE WOMAN AND WHETHER CARNAL KNOWLEDGE TOOK PLACE; SAID TWO ELEMENTS AND THE VICTIM'S RELATIONSHIP WITH THE ACCUSED, ESTABLISHED IN CASE AT BAR.—** Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Proof of force, intimidation and consent is unnecessary, since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place. Here, the prosecution has proved beyond reasonable doubt the said two elements, as well as the victim's relationship with the offender. *First*, the prosecution has presented in evidence the birth certificate of AAA showing that she was only 11 years old when Aycardo had carnal knowledge of her sometime in September 2007, as she was born on October 22, 1995. *Second*, the prosecution has established through the "positive, straightforward and credible" testimony of AAA that Aycardo, her uncle — a relative by affinity within the 3rd civil degree – had carnal knowledge of her[.]

6. **ID.; ID.; QUALIFIED RAPE; PROPER PENALTY AND CIVIL LIABILITY.—** [T]he imposable penalty for Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1)

of the RPC, is death. In view of R.A. No. 9346 and A.M. No. 15-08-02-SC, the CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole, *in lieu* of death. On Aycardo's civil liabilities for Qualified Rape, the awards of ₱75,000.00 each as civil indemnity and moral damages, and ₱30,000.00 as exemplary damages, should all be increased pursuant to *People v. Jugueta*, where it was held that where the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. No. 9346, the civil indemnity *ex delicto*, moral damages, and exemplary damages shall be in the amount of ₱100,000.00 each. Finally, the six percent (6%) legal interest *per annum* imposed on all the amounts awarded reckoned from the date of finality of the judgment until the damages are fully paid, is likewise upheld for being consistent with current jurisprudence.

7. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI CANNOT BE GIVEN GREATER WEIGHT THAN THE DECLARATION OF A CREDIBLE WITNESS.—** In seeking his acquittal of the crimes charged, Aycardo raised the defenses of denial and *alibi*. AAA's positive and credible testimony, coupled with the medical findings, deserves more persuasive weight than Aycardo's bare denial and *alibi*, which are self-serving defenses that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters and positively identified him as the perpetrator of the crimes.

8. **ID.; ID.; RAPE CANNOT BE NEGATED BY THE PRESENCE OF OTHER PEOPLE NEARBY.—** Regarding the claim that the rape incident would not go unnoticed by Bongbong, who was just sleeping between Aycardo and AAA, the CA aptly stressed that rapists are not deterred by the presence of people nearby, such as members of their own family, inside the same room, considering that lust respects no time, place or circumstance. Neither the smallness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held efficient to deter the commission of rape.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

DECISION

PERALTA, *J*.:

This is an appeal from the Decision[1] dated April 24, 2014 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 05752, which affirmed with modification the Consolidated Judgment[2] dated July 16, 2012 of the Regional Trial Court (*RTC*) of Legazpi City, Albay, Branch 8, finding accused-appellant Salvador Aycardo guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code, (*RPC*) as amended, in Criminal Case No. FC-08-0272, and Qualified Rape under Art. 266-A, paragraph 1(d) of the RPC, in Criminal Case No. FC-08-0273.

Accused-appellant Salvador Aycardo was initially charged in two (2) separate Informations dated July 7, 2008 with the crimes of Rape as defined under Article 266-A, par. 2 in relation to par. 1(d) of the RPC, and Rape as defined under Article 266-A, par. 1(d) thereof. Later on, the said charges against Aycardo were amended. The accusatory portions of the Amended Informations dated December 2, 2008 read:

Criminal Case No. FC-08-0272

That sometime in the evening of September 2007, at Barangay of the Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, an adult, taking advantage of his influence being the uncle and relative by affinity within the 3rd civil degree of [AAA][3] as well as the tender age of the said [AAA], with lewd and unchaste design, did then and

---

[1] Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Ramon M. Bato, Jr. and Socorro B. Inting, concurring; *rollo*, pp. 2-21.

[2] Penned by Judge Isabelo T. Rojas; CA *rollo*, pp. 31-40.

[3] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act

there willfully, unlawfully and feloniously committed an act of sexual assault by inserting his finger into the genital orifice upon the person of the said minor [AAA], an eleven (11) year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[4]

Criminal Case No. FC-08-0273

That sometime in the evening of September, 2007, at Barangay Tinapian, of the Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, an adult, taking advantage of his influence being the uncle and relative by affinity within the 3rd civil degree of [AAA] as well as the tender age of the said [AAA], with lewd and unchaste design, did then and there willfully, unlawfully and feloniously have carnal knowledge upon the person of said minor [AAA], an eleven (11) year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[5]

Upon arraignment, Aycardo, duly assisted by counsel, pleaded "not guilty" to both charges. After the pre-trial conference was terminated, a joint trial on the merits ensued.

The prosecution presented three (3) witnesses, namely: AAA, the victim; BBB, her mother; and Dr. James M. Belgira, a forensic physician and Medical Officer of the Philippine National Police Forensic Service, who conducted the medical examination on AAA. The facts established by the evidence of the prosecution, as summed up by the CA, are as follows:

No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, 533 Phil. 703, 709 (2006).

4 Records, p. 29. (Underscoring in the original)

5 *Id*. at 30. (Underscoring in the original)

In 2007, private complainant AAA, then 11 years old, was residing in Manito, Albay, at the house of her Tiya Tess and the latter's husband "Tiyu Buddy," herein accused-appellant, as AAA's mother, BBB, who was based in Batangas, entrusted her to Tiya Tess, BBB's sister.

Sometime in September 2007, at around one o'clock in the afternoon, AAA was in a room inside the house of accused-appellant, when the latter entered, attempted to remove her shorts and panties and tried to insert his finger into her vagina. Accused-appellant failed to undress AAA because she resisted his advances, but accused-appellant was able to touch her vagina with his finger. AAA then ran to the house of her cousin Joy. Later in the evening that same day, accused-appellant came by to fetch her, telling her she needed to prepare his and Tiya Tess' meal. AAA yielded and returned to accused-appellant's house.

Back at accused-appellant's house, AAA prepared supper as instructed and had dinner with accused-appellant and his son Bongbong, his (sic) cousin. After supper, AAA sought accused-appellant's permission to spend the night at the house of Tiya Ening (another sister of her mother) but accused-appellant denied her request. As told, AAA just went to the sala to watch TV, and thereafter, slept on a mat where Bongbong lay between her and accused-appellant. In the middle of the night, AAA was roused from her sleep when she felt somebody removing her panties and shorts, who turned out to be accused-appellant. AAA resisted but accused-appellant told her he would do it slowly. Accused-appellant then undressed and inserted his penis into her vagina. Gripped with fear, she just wept, with accused-appellant warning to kill her if she tells anyone of the incident.

On 26 March 2008, while sleeping with her mother BBB, AAA yelled in her sleep "Enough Tiyo Buddy! I do not want anymore!" Alarmed, BBB immediately asked the latter why she mentioned accused-appellant's name in her dream, but AAA did not respond. The following day, or on 27 March 2008, BBB again asked AAA why the latter uttered accused-appellant's name in her dream and this time, AAA told BBB that accused-appellant had raped her.

BBB and AAA reported the incident to the barangay then to the police station, after which she was medically examined by forensic physician Dr. James M. Belgira. Dr. Belgira's examination (Medico-Legal Report No. MLB-34-08) revealed the following:

GENITAL:

There is absence of growth of pubic hair. The labia majora are full, convex and coaptated with the dark brown labia minor presenting in between. On separating the same disclosed a **markedly dilated** and redundant fleshy type **hymen**. The posterior fourchette is sharp. The external vaginal orifice offers strong resistance to the introduction of the examining index finger. The vaginal canal is narrow with prominent rugosities. The cervix is firm and closed.

CONCLUSION:

Findings show clear sign of blunt vaginal penetrating trauma.

There are no extra genital signs of application of any form of physical trauma.[6]

To substantiate its claims of denial and *alibi*, on the other hand, the defense presented as witnesses Aycardo himself and Odilon Trilles, the barangay captain of Tinapian, Manito, Albay.The facts established by the evidence of the defense, as stated by the CA, are as follows:

Accused-appellant is engaged in handicrafts and farming. He works at the farm owned by his wife in Tinapian, Manito, Albay. He knows AAA to be the daughter of his wife's sister who is also from Tinapian, Manito, Albay. AAA lives with her mother at a place which is 100 meters away from his house. In September 2007, he accompanied his wife on three occasions to his sister's house to treat AAA. He denied AAA to have worked in his house as a helper in September 2007 and further denied to have raped her during at the (sic) time. Accused-appellant testified that he only learned of the case when he was arrested at the police station to inquire about the charges.[7]

After trial, the RTC convicted appellant of the crimes of Acts of Lasciviousness and Qualified Rape. The dispositive portion of the RTC Consolidated Judgment dated July 16, 2012 states:

---

[6] *Rollo*, pp. 5-7. (Citations omitted and emphasis in the original)

[7] *Id*. at 7-8. (Citations omitted)

WHEREFORE, in Criminal Case No. FC-08-0272, this Court finds accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, and there being no aggravating or mitigating circumstance alleged and proved, applying the Indeterminate Sentence Law, this Court imposes upon him a penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum.

Likewise, in Criminal Case No. FC-08-0273, this Court finds accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Rape as defined under Article 266-A 1(d) and penalized under Article 266-B thereof. The qualifying circumstances of the victim's minority and her relationship with the accused as the latter's relative by affinity within the 3rd degree being properly alleged in the information and proven during the trial, this Court, in view of Republic Act No. 9346 which prohibits the imposition of the death penalty, hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused is likewise ordered to pay the victim [AAA] the amount of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages and to pay the further sum of Php25,000.00 as exemplary damages plus costs.

SO ORDERED.[8]

With respect to the first charge, the RTC held that since Aycardo was not actually able to insert his finger inside AAA's vagina, he cannot be convicted of the crime of rape by sexual assault. Still, he can be convicted of acts of lasciviousness, because it is necessarily included in the offense charged in the first Information, and it was proved in court. The RTC noted that, while appellant failed to insert his finger inside AAA's vagina, he was nonetheless able to touch the same, thereby consummating the crime of acts of lasciviousness.

As to the second charge, the RTC found that the prosecution successfully proved the elements of statutory rape, qualified by the circumstances of relationship and minority under Article 266-B of the RPC, namely: that Aycardo, a relative by affinity within the 3rd civil degree, had carnal knowledge of his niece,

---

[8] CA *rollo*, pp. 39-40.

AAA, a child below 12 years of age. The RTC also ruled that Aycardo's self-serving denial cannot prevail over AAA's positive, straightforward, and credible testimony, which was supported by the medico-legal findings of markedly dilated hymen and blunt vaginal penetrating trauma.

Aggrieved by the RTC decision, Aycardo filed an appeal before the CA, arguing that the RTC gravely erred in convicting him of the crimes of Acts of Lasciviousness and Rape, despite the prosecution's failure to prove his guilt beyond reasonable doubt.[9]

In a Decision dated April 24, 2014, the CA affirmed with modification the Consolidated Judgment of the RTC, thus:

> **WHEREFORE**, the assailed Consolidated Judgment dated 16 July 2012 of Branch 8, Regional Trial Court of Legazpi City, Albay, is **AFFIRMED** but with **MODIFICATION** to read as follows:
>
> > **WHEREFORE**, in Criminal Case No. FC-08-0272, this Court finds the accused Salvador Aycardo GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, and there being no aggravating or mitigating circumstance alleged and proved, applying the Indeterminate Sentence Law, this Court imposes upon him a penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. **Accused is also ordered to pay the victim (AAA) the amount of Php20,000.00, as civil indemnity and Php15,000.00 as moral damages.**
> >
> > Likewise, in Criminal Case No. FC-08-0273, this Court finds accused Salvador Aycardo GUILTY beyond reasonable doubt of the crime of Rape as defined under Article 266-A par. 1(d) of the Revised Penal Code and penalized under Article 266-B thereof. The qualifying circumstances of the victim's minority and her relationship with the accused as the latter's relative by affinity within the 3rd degree being properly alleged in the Information and proven during the trial, this Court, in view of Republic Act No. 9346 which prohibits the imposition of the death penalty, hereby sentences him to suffer the penalty of

---

[9] *Id*. at 17.

reclusion perpetua without eligibility for parole. Accused is likewise ordered to pay the victim (AAA) the amount of seventy-five thousand (Php75,000.00) pesos as civil indemnity, **seventy-five thousand (Php75,000.00) pesos** as moral damages and to pay the further sum of **thirty thousand (Php30,000.00) pesos** as exemplary damages plus costs. **The victim is also entitled to an interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.**

SO ORDERED.

SO ORDERED.[10]

Citing Section 4,[11] Rule 120 of the Rules on Criminal Procedure, the CA agreed with the RTC that while Aycardo may not be convicted of the charge of rape by sexual assault, he may still be held liable for acts of lasciviousness, because such crime is necessarily included in the said rape charge which was duly proved in court. The CA gave credence to the testimony of AAA that Aycardo failed in his attempt to remove her shorts and underwear, but was still able to touch her vagina with his finger. Contrary to Aycardo's contention, the CA ruled that AAA's belated disclosure of sexual abuse, as well as her act of returning to his house, do not weaken or discredit her straightforward testimony. The CA stressed that the delay in reporting of such abuse does not imply that the charge is untrue, because the victim may prefer to bear the ignominy of pain in silence rather than reveal her harrowing experience to the shame of the world. Besides, AAA did not have much choice but to return to Aycardo's house, since she was then residing therein and was dependent on him for support.

---

[10] *Rollo,* pp. 20-21. (Emphasis in the original)

[11] SEC. 4. *Judgment in case of variance between allegation and proof—* .When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Dissatisfied with the CA Decision, Aycardo filed a notice of appeal. In compliance with the Court's Resolution dated June 22, 2015, notifying the parties to file their respective supplemental briefs, both Aycardo[12] and the Office of the Solicitor General[13] (*OSG*) manifested that they will no longer file such briefs, considering that they have argued exhaustively all the relevant issues in their respective appeal briefs.

In the Appellant's Brief, Aycardo argued that AAA's behavior after the alleged first sexual assault in September 2007 was inconsistent with the crime of acts of lasciviousness. He pointed out that AAA testified clearly that his finger was never inserted into her vagina, and that he only tried or attempted to remove her shorts and panties, but was unable to do so because she resisted his indecent act. He claimed that AAA's conduct after the alleged first act of sexual abuse negates the possibility that he committed the second rape charge against him. He noted that despite AAA's claim that she ran to the house of her cousin, Joy, to seek refuge, she failed to tell anybody what he supposedly did to her. He found it perplexing that she still went with him when he fetched her from Joy's house in the evening of the same day when he allegedly abused her. He also observed that AAA was too nonchalant about her first harrowing experience, considering that when they arrived home, she immediately prepared food, ate dinner with him and his son, Bongbong, prepared the bed, watched television and slept with Bongbong beside her.

Aycardo further contended that he cannot be convicted of rape because AAA's testimony shows that his private part touched her vagina slightly only; thus, it did not enter the *labia* of the *pudendum* of the female organ. He also noted that the forensic physician who examined AAA did not clearly say that it was his penis, which caused the findings in the medico-legal report that showed that there is a markedly dilated and redundant flesh-type hymen and a sign of blunt vaginal penetrating trauma. He

---

[12] *Rollo*, p. 37.

[13] *Id*. at 31.

then stressed that no laceration was found on AAA's vagina, and that her medical examination was conducted six (6) months after the alleged sexual abuse, hence, the possibility that she had sexual experience with someone else cannot be discounted. Finally, he posited that it is incredible that the alleged rape incident would go unnoticed by Bongbong, considering the close proximity between them while they were sleeping, which would have easily roused the latter from his sleep.

In the Appellee's Brief, the OSG argued that Aycardo's guilt for the crimes of Qualified Rape and Acts of Lasciviousness were proved beyond reasonable doubt. It also rejected as inherently weak his defenses of denial and *alibi* that he was staying in Batangas in September 2007.

The appeal lacks merit, but a modification of the penalty imposed and the damages awarded, is in order.

It is well settled that in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the appellate court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[14] After a careful review of the records, the Court finds no cogent reason to depart from the findings of both the RTC and the CA that the prosecution was able to prove beyond reasonable doubt all the elements of the crimes of Acts of Lasciviousness and Qualified Rape.

With respect to Criminal Case No. FC-08-0272, both the RTC and the CA ruled correctly that Aycardo cannot be convicted of the charge of rape by sexual assault, as he was unable to insert his finger inside AAA's vagina, but he can still be convicted of acts of lasciviousness because its elements are necessarily included in the offense charged, and were proved in court. The

[14] *People of the Philippines v. Jaime Brioso alias Talap-talap*, G.R. No. 209344, June 27, 2016, citing *People v. Bonaagua*, 665 Phil. 750, 766 (2011); *People v. Lindo*, 641 Phil. 635, 647 (2010).

rulings of the RTC and the CA are consistent with Section 4, in relation to Section 5, of Rule 120 of the Rules on Criminal Procedure which provide for the "variance doctrine," *viz.*:

SEC. 4. *Judgment in case of variance between allegation and proof.—* When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.—* An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former continue or form part of those constituting the latter.

In *Navarrete v. People*,[15] the Court noted that, under Section 5(b), Article III of Republic Act (*R.A.*) No. 7610,[16] when the victim is under 12 years old, the accused shall be prosecuted under either Article 335 (for rape) or Article 336 (for acts of lasciviousness) of the RPC. Accordingly, although an accused is charged in the information with the crime of statutory rape (*i.e.*, carnal knowledge of a woman under twelve years of age), the offender can be convicted of the lesser crime of acts of lasciviousness, which is included in rape.

In *People v. Bon*,[17] the Court ruled that even if the statutory rape charge against the accused was not proved beyond reasonable doubt, he can still be held liable for the crime of acts of lasciviousness, as defined and penalized under Article 336 of the RPC, in relation to R.A. No. 7610, since all the elements of this offense were established. It cannot, therefore, be

---

[15] 542 Phil. 496, 506 (2007).

[16] Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

[17] 444 Phil. 571, 584 (2003).

successfully argued that the accused's constitutionally-protected right to be informed of the nature and cause of the accusation against him was violated when he was found guilty under Section 5 of R.A. No. 7610.[18]

Applying the variance doctrine to this case, Aycardo, who was charged with one (1) count of rape by sexual assault, can still be convicted of acts of lasciviousness under Section 5(b), Article III of R.A. No. 7610 even though he was unable to insert his finger into the victim's vagina, because the prosecution has proved that he intentionally touched the same –an act which is deemed a lascivious conduct.

Acts of lasciviousness committed against a child[19] is defined and penalized under Section 5 (b), Article III of R.A. No. 7610, as follows:[20]

> Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> x x x x x x x x x
>
> (b) **Those who commit** the act of sexual intercourse or **lascivious conduct with a child** exploited in prostitution **or subject to other sexual abuse**; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve

---

[18] *Navarrete v. People*, *supra* note 15, at 505-506.

[19] Section 3. *Definition of Terms*.—

(a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

[20] *People v. Bonaagua*, *supra* note 14.

(12) years of age shall be reclusion temporal in its medium period. (Emphasis ours)

Section 5 (b), Article III of R.A. No. 7610 punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses.[21] It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence – engages in sexual intercourse or lascivious conduct with a child. Thus, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.[22]

In *Quimvel vs. People of the Philippines*[23] (*Quimvel*), the Court held that it is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under Section 5(b) of R.A. No. 7610. The first paragraph of Section 5 thereof even provides that the offense can be committed by "any adult, syndicate or group," without qualification. The clear language of the law does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence.[24]

Moreover, it is inconsequential that the sexual abuse occurred only once. As stressed in *Quimvel*, the very definition of "child abuse" under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of, for it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Section 5(b) of the same law occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.[25]

---

[21] *Id*.

[22] *Dimakuta v. People,* G.R. No. 206513, October 20, 2015, 773 SCRA 228. *Olivarez v. People*, 503 Phil. 421, 432 (2005).

[23] G.R. No. 214497, April 18, 2017.

[24] *Quimvel v. People, supra*.

[25] *Id.*

To be sure, Article III of R.A. No. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse.[26]

However, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.[27] Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements:

(1) That the offender commits any act of lasciviousness or lewdness;
(2) That it is done under any of the following circumstances:
a. By using force or intimidation; or
b. When the offended party is deprived of reason or otherwise unconscious; or
c. When the offended party is under 12 years of age; and
(3) That the offended party is another person of either sex.

On the other hand, the following elements of sexual abuse under Section 5, Article III of R.A. No.7610 must be established:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.

As correctly found by the CA, all the elements of acts of lasciviousness under Article 336 of the RPC, as amended, in relation to Section 5(b), Article III of R.A. No. 7610, are present in Criminal Case No. 08-0272 because the evidence of the

---

[26] *Olivarez v. People*, *supra* note 22, at 433.

[27] *Quimvel v. People*, *supra* note 23.

prosecution showed that Aycardo, an adult, took advantage of his influence as the uncle and a relative by affinity within the 3rd civil degree of AAA, and was able to touch her vagina, while he forcibly removed her shorts and panties, *viz.*:

PROS. SARMIENTO:

x x x x x x x x x

q – You have stated awhile ago that your Tiyu Buddy got inside the room while you were inside because you were getting the clothes that you are going to wash, kindly repeat what did Tiyu Buddy do while you were inside the room?

a – **While I was inside the room and Tiyu Buddy on September 2007 at around 1:00 o'clock in the afternoon Tiyu Buddy forcibly removed my short and pant[ies] and tried to insert his finger inside my vagina.**

q – Was he able to insert his finger inside your vagina?

a – Not that time, but late in the evening.

q – **But the finger, as you have demonstrated, did it touch the vagina?**

a – **Yes.** But later in the evening, his finger inserted (sic) inside my vagina and tried to rotate the same inside.

x x x x x x x x x[28]

Intentional touching, either directly or through clothing, of the genitalia of any person, with intent to abuse or gratify sexual desire falls under the definition of "lascivious conduct"[29] under Section 2 (h) of the rules and regulations of R.A. No. 7610. As such, Aycardo's act of touching AAA's vagina after forcibly removing her shorts and panties, and trying to insert his finger into it, satisfies the first element of acts of lasciviousness under

---

[28] TSN, February 19, 2009, p. 12.

[29] [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610.

Anent the second and the third elements thereof, Aycardo, admitted that he is the uncle of AAA, who is the daughter of his wife's sister, BBB.[30] AAA[31] and BBB[32] confirmed such relationship when they both testified that BBB and Aycardo's wife are sisters. That AAA was an 11-year-old female at the time of the commission of the offense in September 2007 is evidenced by her birth certificate.[33] Besides, AAA is deemed a child subjected to other sexual abuse, because she indulged in lascivious conduct under the influence of Aycardo who is an adult.[34]

With regard to Criminal Case No. FC-08-0272, the Court finds no compelling reason to disturb the factual findings of both the RTC and the CA that Aycardo is guilty of Qualified Rape.

Article 266-A of the RPC, as amended by R.A. No. 8353, defines statutory rape, and Article 266-B thereof imposes the death penalty if, among others, the victim is under eighteen (18) years of age and the offender is a relative by affinity within the third (3rd) civil degree, to wit:

Article 266-A. Rape, When and How Committed. — Rape is committed –

1) By a man who shall have carnal knowledge of a woman . . .:

x x x x x x x x x

---

[30] TSN, February 21, 2011, p. 4.

[31] TSN, February 19, 2009, p. 10.

[32] *Id*. at 43.

[33] Records, p. 17. Date of birth is October 22, 1995.

[34] TSN dated February 21, 2011, p. 2. Seventy (73) years old as of the date of his testimony.

d) When the offended party is under twelve (12) years of ageor 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

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent victim;

x x x x x x x x x

Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Proof of force, intimidation and consent is unnecessary, since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[35] Here, the prosecution has proved beyond reasonable doubt the said two elements, as well as the victim's relationship with the offender. *First*, the prosecution has presented in evidence the birth certificate[36] of AAA showing that she was only 11 years old when Aycardo had carnal knowledge of her sometime in September 2007, as she was born on October 22, 1995. *Second*, the prosecution has established through the "positive, straightforward and credible"[37] testimony of AAA that Aycardo, her uncle " a relative

---

[35] *People of the Philippines vs. Jaime Brioso alias Talap-talap*, *supra* note 14.

[36] Records, p. 17.

[37] CA *rollo*, p. 38.

by affinity within the 3rd civil degree – had carnal knowledge of her:

x x x x x x x x x

PROS. SARMIENTO:
q – After the said incident when your Tiyu Buddy tried to insert his finger into your vagina and able to touch it, what happened next?

a – I ran towards the house of Joy but later in the evening Tiyu Buddy [fetched] me.

x x x x x x x x x

q – When he [fetched] you, did you go with him?

WITNESS:

a – Yes, ma'am.

PROS. SARMIENTO:
q – Why did you join despite the fact that he already did a bad thing to you?
a – Because he told me that my Tiya Tess is already coming and I have to prepare the meal.

q – And so when you arrived in the house of Tiyu Buddy, what did you do?
a – I immediately [prepared] the food.

q – What time did you eat your dinner?
a – After cooking the rice.

q – Who joined you in eating?
a – Tiyu Buddy, Bongbong and myself.

x x x x x x x x x

q – After you had eaten your dinner, what did you do next?
a – I asked permission from Tiyu Buddy to stay for a night at Tiya Ening.

PROS. SARMIENTO:
q – Who is this Tiya Ening?
a – Another sister of my mother.

x x x x x x x x x

q – When you had asked your Tiyu Buddy to permit (sic) you to

stay at Tiya Ening, did he permit (sic) you to sleep there?
a – No, he did not permit me.

q – So, after that, what did you do next?
a – I went to the kitchen to try to open the door.

q – And after that, what happened next?
a – Tiyu Buddy tried to struggle and told me to go to the sala and sleep.

x x x x x x x x x

q – And after following his request, what did you do next?
a – I lay the mat on the floor and watched TV for a while.

q – And during that time, where was Tiyu Buddy?
a – He was already lying down.

PROS. SARMIENTO:
q – How about Bongbong, where was he at that time?
a – Bongbong was also in the sala watching TV.

q – And what time did you sleep?
a – After watching Going Bulilit.

q – How about Tiyu Buddy and Bongbong, what time did they sleep?
a – I do not know, ma'am.

q – So, while you were sleeping who was beside you?
a – Bongbong was beside me.

q – How about Tiyu Buddy where did he sleep, if you know?
a – He slept beside Bongbong.

x x x x x x x x x

q – [AAA], if you can recall, what time did you wake up?
a – Midnight. I cannot exactly recall. Middle of the night.

q – Why was it that you were able to wake up in the middle of the night.
a – I was awakened because I felt somebody removing my panty and shorts.

x x x x x x x x x

q – And who was that person?
a – It's Tiyu Buddy.

q – Why were you able to say that it was your Tiyu Buddy who removed your shorts and panty?
a – Because I saw him.

q – After Tiyu Buddy removed your shorts and panty, what happened next?
a – I offered some resistance but he told me that he will do it slowly.

q – So, what did he exactly do?
a – After that he removed his brief and he tried to insert his penis into my vagina.

q – Did the private part of Tiyu Buddy get inside your vagina?
a – It touched my vagina slightly only.

PROS. SARMIENTO:
q – While all these things were done to you by Tiyu Buddy, what was your reaction?
a – I was afraid.

q – Why did you not shout or kick Tiyu Buddy?
a – Because of fear I just cried.

q – Aside from that, what did Tiyu Buddy do to you?
a – He showed me the white substance coming out from his penis.

q – Why were you able to say that it was nighttime?
a – Because I was able to see its color because at that time the TV is open (sic).

q – During this incident that happened where was Bongbong?
a – Bongbong was just beside me.

q – Why did you not ask help from Bongbong?
a – Because Bongbong at that time he was covered with blanket.

q – After the incident in question, after the things done to you by your Tiyu Buddy, what did he tell you, if any?
a – He told me not to narrate the incident to anybody because if I will do it he will kill me.

PROS. SARMIENTO
q – Why was it that you were staying in the house of Tiyu Buddy?
a – Because my mother left me to them.

q – Where was your mother on that September 2007?
a – She is (sic) in Batangas.

PROS. SARMIENTO:

I just want to make of record that the witness is crying while testifying.

x x x   x x x   x x x[38]

The fact that AAA stated that Aycardo's private part touched her vagina "slightly only" hardly means that there was no penetration at all, since her testimony was corroborated by the findings of the examining physician, showing a "clear sign of blunt vaginal penetrating trauma."[39] Further, as aptly noted by the CA, Dr. Belgira testified that he found AAA's hymen to be dilated or "very wide" which was abnormal, considering that a normal hymen opening for a young girl her age should be very small, and that such condition could have been caused by the protrusion into her vagina of a blunt hard object such as a finger or penis.[40] In *People of the Philippines v. Padit,*[41] the Court explained why the slightest penetration of the female genitalia consummates the rape. Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman; as such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape.[42]

In seeking his acquittal of the crimes charged, Aycardo raised the defenses of denial and *alibi*. AAA's positive and credible testimony, coupled with the medical findings, deserves more persuasive weight than Aycardo's bare denial and *alibi*, which are self-serving defenses that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters[43] and positively identified him as the

---

[38] TSN, February 19, 2009, pp. 13-19. (Emphasis added.)

[39] Records, p. 16.

[40] TSN, November 28, 2011, pp. 5-6.

[41] G.R. No. 202978, February 1, 2016.

[42] *People v. Padit, supra*; *People v. Butiong*, 675 Phil. 621, 630 (2011).

[43] *People of the Philippines v. Felipe Bugho y Rompal,* G.R. No. 208360, April 6, 2016.

perpetrator of the crimes. Anent AAA's credibility and indifferent behavior shortly after her sexual abuse in the hands of Aycardo, the Court finds that the CA has exhaustively addressed such issues, as follows:

> It is not disputed that accused-appellant failed to completely undress AAA on that occasion since she was unable to fend off his advances. This, however, does not necessarily negate accused-appellant's act of having successfully touched AAA's vagina with his finger in his struggle to remove her clothes.
>
> Neither can her belated disclosure of the sexual abuse nor her act of returning to accused-appellant's house weaken her testimony and render the same unworthy of credence. AAA could not be blamed for not immediately reporting the incident to her cousin Joy whose house she ran to after the first incident of molestation since she distrusted Joy, [for] being a "gossiper." It has been held that delay in the reporting of sexual abuse does not imply that the charge was not true, as the victim may prefer to bear the ignominy of pain in silence rather than reveal her harrowing experience and expose her shame to the world. Such delay is not unusual, especially when the victim is a minor.
>
> If AAA eventually chose to return to accused-appellant's house despite the first incident, it was not because she welcomed his overtures but more in deference to accused-appellant's moral ascendancy as her uncle. In her direct testimony, she said that despite the first incident, AAA still returned to accused-appellant's house in obedience to his order for AAA to prepare dinner since according to accused-appellant, her Tiya Tess, accused-appellant's wife, was coming home that evening. AAA did not have much of a choice but to return to accused-appellant's house since she was, at that time, dependent on accused-appellant in whose house she resided.[44]

As regards the claim that Dr. Belgira's medico-legal report is unreliable because he did not clearly attribute that AAA's markedly dilated hymen and blunt vaginal penetrating trauma was caused by Aycardo's penis, and the fact that AAA was medically examined only six (6) months after the sexual abuse incident, the Court upholds the CA's correct ruling, to wit:

---

[44] *Rollo,* pp. 11-12.

Accused-appellant has not adduced any evidence showing Dr. Belgira's lack of qualification as to render his testimony unworthy of belief. Neither did he present any evidence showing any ill motive on the part of Dr. Belgira to testify falsely against him. More[over], it has been held that expert testimony is merely corroborative in nature and not essential to conviction. Hence, an accused can still be convicted of rape on the basis of the sole testimony of the private complainant. Hence, even if We were to disregard Dr. Belgira's medico-legal report and testimony, accused-appellant's conviction may still be sustained on the basis of AAA's testimony who categorically testified that accused-appellant inserted his penis into her vagina and even subsequently showed her his semen spurting out of his organ after satiating his lust. Meanwhile, accused-appellant's claim that the belated medical examination of AAA raised the possibility that she may have had sexual intercourse with some other person is purely speculative and cannot be given credence. We, in fact, do not find any reason to disbelieve the account of AAA, a girl who had been sexually molested at the tender age of eleven, who spontaneously shed tears while narrating her sordid experience with accused-appellant. It has been held that the crying of the victim lends credence to her charge of rape for the display of such emotion indicates the pain she feels when asked to recall her harrowing experience.[45]

There is also no merit in Aycardo's claim that the absence of laceration on AAA's vagina belies the rape charge against him. As held in *People v. Pangilinan*[46] "[p]roof of hymenal laceration is not an element of rape. 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 without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape." In this case, Dr. Belgira's finding of "a clear sign of blunt vaginal penetrating trauma,"[47] bolstered AAA's credible testimony that Aycardo raped her.

Regarding the claim that the rape incident would not go unnoticed by Bongbong, who was just sleeping between Aycardo and AAA, the CA aptly stressed that rapists are not deterred

---

[45] *Id*. at 16-17.

[46] 676 Phil. 16, 32 (2011).

[47] Records, p. 16.

by the presence of people nearby, such as members of their own family, inside the same room, considering that lust respects no time, place or circumstance.[48] Neither the smallness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held efficient to deter the commission of rape.[49]

The imposable penalty for acts of lasciviousness under Article 336 under the RPC, in relation to Section 5(b), Article III of R.A. No. 7610, when the victim is under twelve (12) years of age, shall be *reclusion temporal* in its medium period, the range of which is from Fourteen (14) years, Eight (8) months and One (1) day to Seventeen (17) years and Four (4) months. Applying the Indeterminate Sentence Law, and with the presence of the aggravating circumstance of relationship, the maximum term of the sentence to be imposed shall be taken from the maximum of the imposable penalty, which is *reclusion temporal* medium in its maximum period, the range of which is from Sixteen (16) years, Five (5) months and Ten (10) days to Seventeen (17) years and Four (4) months, while the minimum term shall be taken from the penalty next lower in degree, which is *reclusion temporal* minimum, the range of which is from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.[50] Accordingly, Aycardo is sentenced to suffer the indeterminate penalty of Twelve (12) years and One (1) day of *reclusion temporal* minimum, as minimum, to Sixteen (16) years, Five (5) months and Ten (10) days of *reclusion temporal* medium in its maximum period, as maximum.

It is not amiss to stress that the alleged and proved modifying circumstances that the victim is under 12 years old and the offender is a relative by affinity within the third (3rd) civil degree, are insufficient in order for the maximum period to be imposed against the perpetratorpursuant to Section 31,[51] Article XII of

---

[48] *Id.* at 17.

[49] *People v. Rellota*, 640 Phil. 471, 483 (2010).

[50] *People v. Santos,* G.R. No. 205308, February 11, 2015, 750 SCRA 471.

[51] Section 31. *Common Penal Provisions.–*

x x x x x x x x x

R.A. No. 7610, because the same provision requires that such collateral relative must be within the second (2nd) civil degree. At any rate, the said relationship of the offender with the child victim can be considered as an aggravating circumstance for purposes of increasing the period of imposable penalty for acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610. As one of the elements of the same crime, however, the minority of the victim cannot be cited again as an aggravating circumstance in order to increase the period of the imposable penalty.

On the matter of Aycardo's civil liabilities for acts of lasciviousness, the CA properly awarded AAA civil indemnity in the amount of ₱20,000.00 and moral damages in the amount of ₱15,000.00, but exemplary damages in the amount of ₱15,000.00 should also be awarded, in line with current jurisprudence.[52] A fine in the amount of ₱15,000.00[53] is likewise imposed against Aycardo in accordance with Section 31(f),[54] Article XII of R.A. No. 7610.

On the other hand, the imposable penalty for Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the RPC, is death. In view of R.A. No. 9346[55] and A.M. No.

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

[52] *Quimvel v. People, supra* note 23.

[53] *People v. Garingarao*, 669 Phil. 512, 525 (2011).

[54] Section. 31. *Common Penal Provisions.* —

x x x x x x x x x

(f) A fine to be imposed by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[55] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Enacted on 24 June 2006. Section 3 of R.A. No. 9346 states:

15-08-02-SC,[56] the CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole, *in lieu* of death. On Aycardo's civil liabilities for Qualified Rape, the awards of ₱75,000.00 each as civil indemnity and moral damages, and ₱30,000.00 as exemplary damages, should all be increased pursuant to *People v. Jugueta*,[57] where it was held that where the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. No. 9346, the civil indemnity *ex delicto*, moral damages, and exemplary damages shall be in the amount of ₱100,000.00 each. Finally, the six percent (6%) legal interest *per annum* imposed on all the amounts awarded reckoned from the date of finality of the judgment until the damages are fully paid, is likewise upheld for being consistent with current jurisprudence.[58]

WHEREFORE, the appeal is **DISMSSED**, and the Decision dated April 24, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05752 is **AFFIRMED with MODIFICATION**, thus:

1. In Criminal Case No. FC-08-0272, accused-appellant Salvador Aycardo is found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness as defined under Article 336 of the Revised Penal Code and penalized under Section 5(b), Article III of R.A. No. 7610. There being an aggravating circumstance of

---

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[56] Guidelines For the Proper Use of the Phrase "Without Eligibility For Parole" in Indivisible Penalties dated August 4, 2015; II (2) When the circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification "*without eligibility for parole"* shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

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

[58] *People of the Philippines v. Roger Galgati y Gardoce*, G.R. No. 207231, June 29, 2016.

relationship that was alleged and proved, Aycardo is sentenced to suffer the indeterminate penalty of Twelve (12) years and One (1) day of *reclusion temporal* minimum, as minimum, to Sixteen (16) years, Five (5) months and Ten (10) days of *reclusion temporal* medium in its maximum period, as maximum. He is also ordered to pay AAA the amount of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages, as well as the fine of ₱15,000.00.

2. In Criminal Case No. FC-08-0273, accused-appellant Salvador Aycardo is found guilty beyond reasonable doubt of the crime of Rape as defined under Article 266-A (1)(d) and penalized under Article 266-B of the Revised Penal Code. In view of the presence of the qualifying circumstances of the victim's minority and her relationship with the appellant as the latter's relative by affinity within the 3rd degree, Aycardo is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, in accordance with Section 3 of Republic Act No. 9346.[59] He is, likewise, ordered to pay AAA the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

All damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid. Costs of suit against accused-appellant Aycardo.

SO ORDERED.

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

Mendoza and *Martires, JJ.,* on official leave.

---

[59] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Enacted on 24 June 2006. Section 3 of RA 9346 states:

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

THIRD DIVISION

[G.R. No. 218942. June 5, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO BISORA *y* LAGONOY,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS THAT MUST BE PROVED FOR CONVICTION.—** For conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. **ID.; ID.; ID.; FORCE AND INTIMIDATION TO FACILITATE THE COMMISSION OF RAPE, ESTABLISHED.—** We find that accused-appellant employed force upon AAA when he forcibly held AAA by the hand as he led her to the comfort room. We also find that intimidation facilitated the commission of the offense, considering accused-appellant's persistent threats to AAA in saying "*subukan mong magsumbong sa magulang mo.*" We are cognizant of the fact that the victim, AAA, was then a 16-year old girl who heavily feared her parents, while accused-appellant was a 42-year old man. Evidently, it is not unreasonable to discern that AAA was cowed to surrendering to accused-appellant's bestial desires. We note that in AAA's direct testimony, she narrated that she felt afraid when accused-appellant uttered the said statement.

3. **ID.; ID.; FAILURE TO SHOUT OR TO TENACIOUSLY RESIST DOES NOT MAKE VICTIM'S SUBMISSION TO ACCUSED'S CRIMINAL ACT VOLUNTARY.—** AAA's failure to shout or to tenaciously resist accused-appellant should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to accused-appellant's criminal act. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in our jurisprudence, not all victims react the same way. Some

people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her.

4. **ID.; ID.; FAILURE TO IMMEDIATELY REPORT THE INCIDENT IS NOT AN INDICATION OF FABRICATED CHARGE AND DOES NOT AFFECT THE CREDIBILITY OF THE COMPLAINANT.—** Neither do We find meritorious accused-appellant's claim questioning AAA's failure to immediately report the incident. Suffice it to state that delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the complainant. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.

5. **ID.; ID.; THAT ACCUSED AND COMPLAINANT WERE SWEETHEARTS DOES NOT NECESSARILY NEGATE THE LATTER'S LACK OF CONSENT TO THE SEXUAL ACT.—** As to accused-appellant's claim that he and AAA were sweethearts, such fact does not necessarily negate AAA's lack of consent to the sexual encounter with accused-appellant. As has been consistently ruled, "*a love affair does not justify rape, for the beloved cannot be sexually violated against her will. Love is not a license for lust*."

6. **ID.; ID.; LEVEL OF HEALING THE VICTIM'S HYMEN DOES NOT CAST DOUBT TO THE CONCLUSION THAT SHE WAS RAPED.—** [T]he level, of healing of AAA's hymen does not cast any doubt to the conclusion that she was raped. The essence of rape is the carnal knowledge of a woman against her consent. A freshly broken hymen is not one of its essential elements. Even if the hymen of the victim was still intact, the possibility of rape cannot be ruled out. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. To repeat, rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape.

7. ID.; ID.; PENALTY FOR SIMPLE RAPE AND CIVIL LIABILITY.— As to the 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 also resolves to increase the amount of civil indemnity of PhP50,000 to PhP75,000; moral damages of PhP50,000 to PhP75,000; and exemplary damages of PhP25,000 to PhP75,000 pursuant to prevailing jurisprudence. The amount of damages awarded should earn interest at the rate of 6% per annum from the finality of this judgment until said amounts are fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

TIJAM, *J.*:

Accused-appellant Rolando Bisora y Lagonoy challenges in this appeal the October 10, 2014 Decision[1] promulgated by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06282, which affirmed the judgment[2] of conviction for Rape rendered against him on June 28, 2013 by Branch 172 of the Valenzuela City Regional Trial Court (RTC) in Criminal Case No. 552-V-12.

The Facts

Accused-appellant was charged under the following information:

That on or about May 23, 2012, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon

---

[1] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Agnes Reyes-Carpio and Victoria Isabel A. Paredes; *rollo*, pp. 2-11.

[2] Penned by Judge Nancy Rivas-Palmones, CA *rollo*, pp. 57-60.

the person of one AAA, 16 years old, DOB: August 17, 1995 (complainant), did then and there wilfully, unlawfully and feloniously have sexual intercourse with the said minor complainant against her will and without her consent, thereby subjecting the said minor complainant to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.[3]

Upon arraignment, accused-appellant pleaded not guilty.

AAA,[4] the complainant, testified that she was raped by accused-appellant twice: on September 9, 2011 and May 23, 2012. AAA declared that accused-appellant started courting her in September 2011, and they became sweethearts one month thereafter. AAA and accused-appellant's relationship remained a secret as AAA was afraid of her parents.

On September 9, 2011, AAA narrated that she was requested by her grandmother to call her uncle at the billiard hall. Accused-appellant, who was also at the same place, asked AAA if they could talk. Accused-appellant then brought AAA to the restroom where he forced her to have sexual intercourse with him. Fearing that her parents would know what happened between her and accused-appellant, AAA went away and stayed with her aunt in Cavite. Nevertheless, AAA's parents learned about the incident. AAA alleged that she wanted to file a complaint then but she did not know accused-appellant's surname.

Meanwhile, AAA was again raped on May 23, 2012, at around 2 o'clock in the afternoon. AAA was then at her house when accused-appellant invited her to talk. Accused-appellant brought AAA to the neighbor's comfort room. While inside, accused-

---

[3] *Id.* at 12.

[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 names of the rape victims will not be disclosed. The Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims of any other information tending to establish or compromise their identities will likewise be withheld.

appellant told AAA to remove her shorts. Fearing accused-appellant, AAA complied. Accused-appellant then inserted his penis inside AAA's vagina, while in a standing position. AAA pushed accused-appellant, but to no avail.

Through their neighbors, AAA's parents had learned what happened. AAA's parents then brought her to the police station where she executed a written statement regarding the incident. AAA declared in open court that she was a minor when she was raped by accused-appellant.

Aside from AAA, the prosecution also presented Police Senior Inspector (PSI) Jocelyn P. Cruz, the medico-legal officer of the Northern Police District Crime Laboratory who examined AAA. She testified that AAA's hymen showed clear signs of blunt penetration trauma, which could have been caused by an erect penis or finger.

Accused-appellant, on the other hand, denied that he raped AAA. He stated that he was merely introduced to AAA by a common friend, after which they became sweethearts. He admitted to being in the billiard hall and seeing AAA therein on May 23, 2012, when AAA was allegedly raped, but denied that he had a sexual encounter with her.

On June 28, 2013, the RTC rendered judgment, finding accused-appellant guilty of Rape under paragraph 1(a) of Art. 266-A of the Revised Penal Code (RPC), sentencing him to suffer the penalty of *reclusion perpetua,* and ordering him to pay the complainant moral damages of PhP50,000, civil indemnity of PhP50,000, and exemplary damages of PhP25,000.

Seeing merit on the RTC ruling, the CA, in its October 10, 2014 Decision, affirmed the RTC decision in its entirety. Accused-appellant then comes before this Court, maintaining that the prosecution failed to prove his guilt beyond reasonable doubt.

The Ruling of the Court

We dismiss the appeal.

For conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[5]

In this case, We find no merit in accused-appellant's argument that the prosecution failed to establish force or intimidation.

AAA's failure to shout or to tenaciously resist accused-appellant should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to accused-appellant's criminal act. In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in our jurisprudence, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point.[6]

In this case, We find that accused-appellant employed force upon AAA when he forcibly held AAA by the hand as he led her to the comfort room. We also find that intimidation facilitated the commission of the offense, considering accused-appellant's persistent threats to AAA in saying *"subukan mong magsumbong sa magulang mo."* We are cognizant of the fact that the victim, AAA, was then a 16-year old girl who heavily feared her parents, while accused-appellant was a 42-year old man. Evidently, it is not unreasonable to discern that AAA was cowed to

---

[5] *People of the Philippines v. Elmer Baldo y Santain*, G.R. No. 175238, February 24, 2009.

[6] *Id.*

surrendering to accused-appellant's bestial desires. We note that in AAA's direct testimony, she narrated that she felt afraid when accused-appellant uttered the said statement.[7]

Neither do We find meritorious accused-appellant's claim questioning AAA's failure to immediately report the incident. Suffice it to state that delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the complainant. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[8]

As to accused-appellant's claim that he and AAA were sweethearts, such fact does not necessarily negate AAA's lack of consent to the sexual encounter with accused-appellant. As has been consistently ruled, "*a love affair does not justify rape, for the beloved cannot be sexually violated against her will. Love is not a license for lust.*"[9]

Finally, the level of healing of AAA's hymen does not cast any doubt to the conclusion that she was raped. The essence of rape is the carnal knowledge of a woman against her consent. A freshly broken hymen is not one of its essential elements. Even if the hymen of the victim was still intact, the possibility of rape cannot be ruled out. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. To repeat, rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape.[10]

---

[7] See CA *rollo*, p. 47.

[8] *People of the Philippines v. Dandito Lastrollo y Doe,* G.R. No. 212631, November 7, 2016.

[9] *People of the Philippines v. Johnlie Lagangga y Dumpa,* G.R. No. 207633, December 9, 2015.

[10] *People of The Philippines and AAA v. Court of Appeals,* G.R. No. 183652, February 25, 2015.

In sum, the prosecution was able to establish accused-appellant's guilt of the crime charged beyond reasonable doubt.

As to the 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 also resolves to increase the amount of civil indemnity of PhP50,000 to PhP75,000; moral damages of PhP50,000 to PhP75,000; and exemplary damages of PhP25,000 to PhP75,000 pursuant to prevailing jurisprudence.[11] The amount of damages awarded should earn interest at the rate of 6% per annum from the finality of this judgment until said amounts are fully paid.[12]

WHEREFORE, the instant appeal is **DISMISSED.** The Court of Appeals Decision in CA-G.R. CR-H.C. 06282 dated October 10, 2014 which found accused-appellant Rolando Bisora y Lagonoy **GUILTY** of rape in Criminal Case No. 552-V-12 is **AFFIRMED,** with **MODIFICATIONS** that: (1) the awards of civil indemnity, moral damages and exemplary damages are each increased to PhP75,000; and, (2) all damages awarded shall earn interest at the rate of 6% per annum from date of finality of this judgment until fully paid.

Considering that the accused-appellant is a detention prisoner, he is hereby credited with the full length of time he has been under detention.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Bersamin,* and *Reyes, JJ.,* concur.

---

[11] *People of The Philippines v. Ireneo Jugueta,* G.R. No. 202124, April 5, 2016.

[12] *People of The Philippines v. Vivencio Ausa,* G.R. No. 209032, August 3, 2016.

[*] Designated as an additonal member as per Raffle dated February 20, 2017.

FIRST DIVISION

[G.R. No. 220211. June 5, 2017]

EDRON CONSTRUCTION CORPORATION and EDMER Y. LIM, *petitioners, vs.* **THE PROVINCIAL GOVERNMENT OF SURIGAO DEL SUR, represented by GOVERNOR VICENTE T. PIMENTEL, JR.**, *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; EFFECTS OF FAILURE TO PLEAD; WHERE DEFENDANT FAILS TO RAISE A DEFENSE NOT SPECIFICALLY EXCEPTED IN SECTION 1, RULE 9 OF THE RULES OF COURT, SUCH DEFENSE SHALL BE DEEMED WAIVED; RULE APPLIED IN CASE AT BAR.— [E]xcept for the defenses of: (*a*) lack of jurisdiction over the subject matter of the case; (*b*) *litis pendentia;* (*c*) *res judicata;* and/or (*d*) prescription other defenses must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver thereof. Otherwise stated, if a defendant fails to raise a defense not specifically excepted in Section 1, Rule 9 of the Rules of Court either in a motion to dismiss or in the answer, such defense shall be deemed waived, and consequently, defendant is already estopped from relying upon the same in further proceedings. In the instant case, a judicious review of the records reveals that respondent's Answer with Counterclaim dated January 6, 2009 did not raise as an issue or as a defense petitioners' non-execution of the sworn statement pertained to in Paragraph 4.3, Article IV of the construction agreements. In fact, such matter was only raised in its Motion to Dismiss filed more than a year later after the Answer, or on May 24, 2010, to support the ground relied upon in the said Motion, which is failure to state a cause of action. However, it must be pointed out that the Motion and the arguments supporting it can no longer be considered since it was filed out of time as Section 1, Rule 16 of the Rules of Court explicitly provides that motions to dismiss should be filed "[w]ithin the time for but before the filing the answer to

the complaint or pleading asserting a claim." More importantly, such matter/defense raised in the motion does not fall within the exceptions laid down in Section 1, Rule 9 of the Rules of Court. As such, respondent was already precluded from raising such issue/defense.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioners.
Limuel L. Auza 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 November 26, 2014 and the Resolution[3] dated September 8, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 99539, which reversed and set aside the Decision[4] dated December 28, 2010 and the Order[5] dated September 16, 2011 of the Regional Trial Court of Quezon City, Branch 77 (RTC) in Civil Case No. Q-08-63154, and consequently, dismissed the complaint filed by petitioners Edron Construction Corporation and Edmer Y. Lim (petitioners) against respondent the Provincial Government of Surigao Del Sur, represented by Governor Vicente T. Pimentel, Jr. (respondent).

---

[1] *Rollo*, pp. 9-37.

[2] *Id*. at 73-81. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda concurring.

[3] *Id.* at 95-97. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Rodil V. Zalameda and Samuel H. Gaerlan concurring.

[4] *Id.* at 39-47. Penned by Judge Vivencio S. Baclig.

[5] *Id.* at 53-54. Penned by Acting Presiding Judge Ma. Belen Ringpis-Liban.

The Facts

The instant petition stemmed from a Complaint[6] for specific performance and damages filed by petitioners Edron Construction Corporation and Edmer Y. Lim (Lim; collectively, petitioners) against respondent before the RTC. Petitioners alleged that they entered into three (3) separate construction agreements[7] with respondent for the construction of the Learning Resource Center of Tandag, Tandag Bus/Jeepney Terminal, and Tandag Public Market. Petitioners claimed that despite their completion and respondent's consequent acceptance of the works as evidenced by Certificates of Final Acceptance,[8] the latter had yet to pay them the aggregate amount of ₱8,870,729.67, despite numerous oral and written demands. Thus, they filed the instant complaint to claim the aforesaid amount, plus ₱500,000.00 as actual damages and ₱250,000.00 as attorney's fees.[9]

In its Answer with Counterclaim[10] dated January 6, 2009, respondent admitted the existence of the aforesaid construction contracts. However, it nevertheless maintained, *inter alia*, that: (*a*) there is no unpaid balance; (*b*) petitioners are in fact liable for underruns and defective works; (*c*) petitioners had already waived or abandoned their right to collect any amount on the ground of prescription; and (*d*) petitioners are guilty of non-observance of the specifications indicated in the construction contracts.[11]

More than a year after the filing of its Answer, respondent filed a Motion to Dismiss[12] dated May 24, 2010 on the ground of failure to state a cause of action. It argued that under Paragraph

---

[6] *Rollo*, pp. 55-61.

[7] See records, pp. 9-20, 21-33, and 34-44.

[8] See *id.* at 107-109.

[9] *Rollo*, pp. 55-61. See also *rollo*, pp. 39 and 74-75.

[10] Records, pp. 58-66.

[11] *Id*. See also *rollo*, pp. 39-40 and 75-76.

[12] *Rollo*, pp. 64-70.

4.3, Article IV of the construction agreements, final payment to petitioners shall be made only after the submission of a sworn statement attesting to the fact that all of the latter's obligations for labor and materials under the contracts have been fully paid. In this regard, respondent contended that since petitioners have yet to submit such sworn statement, then the latter do not have a cause of action against it.[13] The motion was, however, denied in an Order[14] dated August 11, 2010.

Meanwhile, during trial, Lim testified that: (*a*) petitioners referred the instant matter to a Presidential Flagship Committee, which valued respondent's alleged arrears at ₱4,326,174.50, and that the former accepted such valuation and agreed to be paid such reduced amount, but respondent still failed to pay the same;[15] and (*b*) petitioners no longer executed a separate affidavit referred to in Paragraph 4.3, Article IV of the construction agreements, maintaining that everything that was needed in claiming full payment from respondent were already attached in the final billings they submitted to the latter.[16] On the other hand, witnesses for respondent testified, among others, that respondent accepted the projects subject of the construction agreements, free from major defects and deficiencies, but nonetheless resisted making payments due to discrepancies in the valuations arising from petitioners' alleged deviations from project specifications.[17]

The RTC Ruling

In a Decision[18] dated December 28, 2010, the RTC ruled in petitioners' favor, and accordingly, ordered respondent to pay them: (*a*) ₱4,326,174.50 with interests of six percent (6%) per

[13] *Id*.

[14] *Id*. at 71.

[15] *Id.* at 42-43.

[16] *Id*. at 78. See also Transcript of Stenographic Notes dated February 10, 2010, p. 22 (Records, p. 526).

[17] See *id*. at 44-46.

[18] *Id*. at 39-47.

annum computed from June 20, 2000, and thereafter, twelve percent (12%) per annum from the filing of the complaint on August 5, 2008; (*b*) ₱50,000.00 as attorney's fees; and (*c*) the costs of suit.[19] The RTC found that in light of respondent's admission that the construction works were satisfactorily completed, free from major defects, and that it has accepted the same, petitioners have amply proven their entitlement to the payment of their claim in the reduced amount of ₱4,326,174.50 based on the Presidential Flagship Committee's valuation, which petitioners had accepted. On the other hand, the RTC pointed out that respondent's witnesses had not shown the alleged deviations, much less submitted the list of defects and deficiencies on the projects subject of the construction agreements, on which respondent justified its reason for non-payment of petitioners' claims.[20]

Respondent moved for reconsideration[21] which was denied in an Order[22] dated September 16, 2011. Aggrieved, respondent appealed to the CA.[23]

The CA Ruling

In a Decision[24] dated November 26, 2014, the CA reversed and set aside the RTC ruling, and consequently, dismissed the complaint for lack of cause of action.[25] It held that by the very terms of the construction agreements, specifically Paragraph 4.3, Article IV thereof, the contractor's submission of the sworn statement attesting that all its obligations for labor and materials under the contracts have been fully paid is a condition *sine qua non* in demanding final payment from the owner. Hence,

---

[19] *Id.* at 47.

[20] *Id*. at 46-47.

[21] Dated January 27, 2011; records, pp. 410-414.

[22] *Rollo*, pp. 53-54.

[23] See Notice of Appeal dated October 11, 2011; records, pp. 430-430-A.

[24] *Rollo*, pp. 73-81.

[25] *Id*. at 80.

in view of petitioners': (*a*) admission in open court that no such sworn statement was submitted; and (*b*) failure to submit evidence showing that a sworn statement was submitted to respondents, petitioners could not validly make a demand for final payment from respondent. In other words, petitioners' cause of action against respondent has not yet accrued.[26]

Undaunted, petitioners moved for reconsideration,[27] which was, however, denied in a Resolution[28] dated September 8, 2015; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly reversed and set aside the RTC ruling, and consequently, dismissed petitioners' complaint for lack of cause of action.

The Court's Ruling

The petition is meritorious.

At the outset, the Court notes that the CA's dismissal of petitioners' complaint is heavily-grounded on the latter's alleged non-submission of the sworn statement required in Paragraph 4.3, Article IV[29] of the construction agreements.

Such reliance is misplaced.

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

---

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

[27] Dated December 10, 2014; *id*. at 82-88.

[28] *Id.* at 95-97.

[29] Paragraph 4.3, Article IV of the Construction Agreements uniformly read:

4.3. Final Payment: Final payment to the CONTRACTOR shall be subject to the issuance of a Certificate of Acceptance of the contract work by the OWNER. The OWNER shall then effect the final payment to the CONTRACTOR; provided, however, that the CONTRACTOR has submitted a sworn statement attesting that all its obligations for labor and materials under the Contract have been fully paid.

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

It may be gleaned from the said provision that except for the defenses of: (*a*) lack of jurisdiction over the subject matter of the case; (*b*) *litis pendentia*; (*c*) *res judicata*; and/or (*d*) prescription, other defenses must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver thereof. Otherwise stated, if a defendant fails to raise a defense not specifically excepted in Section 1, Rule 9 of the Rules of Court either in a motion to dismiss or in the answer, such defense shall be deemed waived, and consequently, defendant is already estopped from relying upon the same in further proceedings.[30]

In the instant case, a judicious review of the records reveals that respondent's Answer with Counterclaim[31] dated January 6, 2009 did not raise as an issue or as a defense petitioners' non-execution of the sworn statement pertained to in Paragraph 4.3, Article IV of the construction agreements. In fact, such matter was only raised in its Motion to Dismiss[32] filed more than a year later after the Answer, or on May 24, 2010, to support the ground relied upon in the said Motion, which is failure to state a cause of action. However, it must be pointed out that the Motion and the arguments supporting it can no longer be considered since it was filed out of time as Section 1, Rule 16 of the Rules of Court explicitly provides that motions to dismiss should be filed "[w]ithin the time for but before the filing the answer to the complaint or pleading asserting a claim." More importantly, such matter/defense raised in the motion does not fall within the exceptions laid down in Section 1, Rule 9 of the

---

[30] See *Boston Equity Resources, Inc. v. CA*, 711 Phil. 451 (2013).

[31] Records, pp. 58-66.

[32] *Rollo*, pp. 64-70.

Rules of Court. As such, respondent was already precluded from raising such issue/defense. Hence, the RTC cannot be faulted in: (*a*) issuing an Order[33] dated August 11, 2010 denying the Motion to Dismiss; and (*b*) not including a discussion of said issue/defense in its Decision[34] dated December 28, 2010 and Order[35] dated September 16, 2011.

In light of the foregoing, the CA erred in dismissing petitioners' complaint on a ground belatedly and improperly raised by respondent. Thus, the Court is constrained to overturn said dismissal and in turn, uphold the RTC's finding of liability on the part of respondents, especially considering that it issued Certificates of Final Acceptance[36] essentially stating that the projects were satisfactorily completed, free from major defects, and that it was formally accepting the same. As a result, respondent is hereby adjudged to be liable to petitioners in the amount of ₱4,326,174.50, which is the valuation of such liability according to the Presidential Flagship Committee's valuation accepted by petitioners.

Finally and in line with prevailing jurisprudence, such amount shall earn legal interest of twelve percent (12%) per annum, computed from first demand on June 20, 2000 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of the Decision. Said sum, as well as the other amounts awarded by the RTC (*i.e.*, ₱50,000.00 as attorney's fees and the costs of suit) shall then earn legal interest of six percent (6%) per annum from finality of the Decision until fully paid.[37]

WHEREFORE, the petition is **GRANTED**. The Decision dated November 26, 2014 and the Resolution dated September 8, 2015 of the Court of Appeals in CA-G.R. CV No. 99539 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the

---

[33] *Id*. at 71.

[34] *Id*. at 39-47.

[35] *Id.* at 53-54.

[36] Records, pp. 107-109.

[37] See *Nacar v. Gallery Frames*, 716 Phil. 267, 275-283 (2013).

Decision dated December 28, 2010 and the Order dated September 16, 2011 of the Regional Trial Court of Quezon City, Branch 77 in Civil Case No. Q-08-63154 are hereby **REINSTATED** with **MODIFICATION**, in that respondent the Provincial Government of Surigao Del Sur, represented by Governor Vicente T. Pimentel, Jr., is liable to petitioners Edron Construction Corporation and Edmer Y. Lim for the amounts of: (*a*) ₱4,326,174.50 plus legal interest of twelve percent (12%) per annum, computed from first demand on June 20, 2000 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of the Decision; (*b*) ₱50,000.00 as attorney's fees; and (*c*) the costs of suit. Furthermore such amounts shall earn an additional six percent (6%) per annum from finality of the Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson) , Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

EN BANC

[A.C. No. 10911. June 6, 2017]

VIRGILIO J. MAPALAD, SR., *complainant, vs.* **ATTY. ANSELMO S. ECHANEZ,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT; IN VIEW OF RESPONDENT'S ACT OF USING A FALSE MCLE COMPLIANCE NUMBER IN HIS PLEADINGS, HIS REPEATED FAILURE TO OBEY LEGAL ORDERS, AND THE FACT THAT HE HAD ALREADY BEEN SANCTIONED TWICE BY THE COURT ON SEPARATE CASES, THE

COURT IS CONSTRAINED TO DISBAR RESPONDENT FROM THE PRACTICE OF LAW.— *First.* It was clearly established that respondent violated Bar Matter No. 850. No less than the MCLE Office had issued a certification stating that respondent had not complied with the first and second compliance period of the MCLE. *Second.* Despite such non-compliance, respondent repeatedly indicated a false MCLE compliance number in his pleadings before the trial courts. In indicating patently false information in pleadings filed before the courts of law, not only once but four times, as per records, the respondent acted in manifest bad faith, dishonesty, and deceit. In so doing, he indeed misled the courts, litigants – his own clients included – professional colleagues, and all others who may have relied on such pleadings containing false information. Respondent's act of filing pleadings that he fully knew to contain false information is a mockery of the courts, especially this Court, considering that it is this Court that authored the rules and regulations that the respondent violated. x x x In using a false MCLE compliance number in his pleadings, respondent also put his own clients at risk. Such deficiency in pleadings can be fatal to the client's cause as pleadings with such false information produce no legal effect. In so doing, respondent violated his duty to his clients. x x x *Third.* The respondent also repeatedly failed to obey legal orders of the trial court, the IBP-CBD, and also this Court despite due notice. x x x [R]espondent's act of ignoring the said court orders despite notice violates the lawyer's oath and runs counter to the precepts of the CPR. By his repeated dismissive conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court. Respondent's culpability is further highlighted by the fact that, as cited by the IBP Board of Governors in its resolution, respondent had already been sanctioned by the IBP twice. x x x It is noteworthy that in both cases, respondent already manifested his lack of regard, not only for the charges against him, but most importantly to the orders of the IBP and the courts.

D E C I S I O N

TIJAM, *J.*:

This administrative case arose from a verified Complaint for disbarment dated October 16, 2009 filed by complainant Virgilio

Mapalad, Sr. against respondent Atty. Anselmo S. Echanez before the Integrated Bar of the Philippines (IBP).[1]

The Facts

Complainant alleged that in an action for Recovery of Possession and Damages with Writ of Preliminary Mandatory Injunction docketed as Civil Case No. 1635-1-784 before the Municipal Trial Court in Santiago City, Isabela, complainant was one of the plaintiffs while respondent was the defendants' counsel therein. As the said case was decided in favor of the plaintiffs, respondent filed a Notice of Appeal dated May 22, 2009, in which respondent indicated his Mandatory Continuing Legal Education (MCLE) Compliance No. II-0014038 without indicating the date of issue thereof.[2] On appeal, respondent filed the appellants' brief, again only indicating his MCLE Compliance Number.[3]

In another case docketed as Special Civil Action No. 3573, respondent, for the same clients, filed a Petition for Injunction wherein he once again only indicated his MCLE Compliance Number.[4] Respondent also filed a Motion for Leave of Court dated July 13, 2009 in the said special civil action, indicating his MCLE Compliance Number without the date of issue.[5]

Upon inquiry with the MCLE Office, complainant discovered that respondent had no MCLE compliance yet. The MCLE Office then issued a Certification dated September 30, 2009, stating that respondent had not yet complied with his MCLE requirements for the First Compliance Period (April 15, 2001 to April 14, 2004) and Second Compliance Period (April 15, 2004 to April 14, 2007).[6]

Hence, this complaint. Complainant argues that respondent's act of deliberately and unlawfully misleading the courts, parties, and

---

[1] *Rollo*, pp. 2-5.

[2] *Id.* at p. 6.

[3] *Id.* at pp. 7-18.

[4] *Id*. at pp. 19-22.

[5] *Id.* at pp. 23-24.

[6] *Id.* at p. 25.

counsels concerned into believing that he had complied with the MCLE requirements when in truth he had not, is a serious malpractice and grave misconduct.[7] The complainant, thus, prayed for the IBP to recommend respondent's disbarment to this Court.[8]

In a resolution dated February 10, 2010, this Court required the respondent to file a comment on the complaint within ten days from notice.[9] Despite receipt thereof, however, respondent failed to comply with the said resolution.[10] This Court, thus, issued another resolution dated July 11, 2011 requiring the respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and, again, to file a comment to the complaint.[11] However, the respondent again failed to comply.[12]

On August 14, 2013, the IBP Commission on Bar Discipline (IBP-CBD) issued a Notice of Mandatory Conference/Hearing.[13] On the date of the hearing, however, none of the parties appeared despite due notice.[14] Nonetheless, the IBP directed the parties to submit their respective position papers within 10 days from notice.[15] Only the complainant filed his position paper, reiterating the allegations and arguments in his complaint.[16]

After investigation, the Investigating Commissioner of the IBP-CBD rendered a report[17] dated December 17, 2013 with the following recommendation, to wit:

---

[7] *Supra* note 1.

[8] *Id*.

[9] *Id.* at p. 35.

[10] *Id.* at p. 36.

[11] *Id.*

[12] No compliance on record.

[13] *Rollo*, p. 38.

[14] *Id.* at p. 39.

[15] *Id.*

[16] *Id.* at pp. 40-44.

[17] *Id.* at pp. 72-76.

"WHEREFORE, after a careful evaluation of the pieces of evidence submitted by the complainant, it is recommended that ATTY. ANSELMO S. ECHANEZ be DISBARRED and that his name be stricken from the Roll of Attorneys upon finality of the decision.

SO ORDERED."[18]

On September 28, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-685, adopting and approving the report and recommendation of the CBD-IBP Investigating Commissioner, *viz.*:

"RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation to be fully supported by the evidence on record and applicable laws, and for Respondent's violation of the Lawyer's Oath, Canon 1, Rule 1.01 and Canon 10, Rule 10.01 of the Code of Professional Responsibility when he falsified his MCLE Compliance Number and used it in his pleadings in Court, including his having ignored the Orders and notices of the Commission on Bar Discipline and his having been previously sanctioned twice by the IBP, Atty. Anselmo Echanez is hereby **DISBARRED and his name stricken from the Roll of Attorneys.**"[19]

No motion for reconsideration was filed by either party.

The Issue

Should respondent be administratively disciplined based on the allegations in the complaint and evidence on record?

The Ruling

We answer in the affirmative.

Preliminarily, let it be stated that there is no denying that the respondent was given ample opportunity to answer the imputations against him and defend himself but he did not do so despite due notices.

---

[18] *Id.* at 76.

[19] *Id.* at 71.

At any rate, respondent's acts of misconduct are clearly manifest, thus, warranting the exercise by this Court of its disciplinary power.

First. It was clearly established that respondent violated Bar Matter No. 850.[20] No less than the MCLE Office had issued a certification stating that respondent had not complied with the first and second compliance period of the MCLE.[21]

Second. Despite such non-compliance, respondent repeatedly indicated a false MCLE compliance number in his pleadings before the trial courts.[22]

In indicating patently false information in pleadings filed before the courts of law, not only once but four times, as per records, the respondent acted in manifest bad faith, dishonesty, and deceit. In so doing, he indeed misled the courts, litigants – his own clients included – professional colleagues, and all others who may have relied on such pleadings containing false information.[23]

Respondent's act of filing pleadings that he fully knew to contain false information is a mockery of the courts, especially this Court, considering that it is this Court that authored the rules and regulations that the respondent violated.[24]

The Lawyer's Oath in Rule 138, Section 3 of the Rules of Court requires commitment to obeying laws and legal orders, doing no falsehood, and acting with fidelity to both court and client, among others, *viz.*:

> I, x x x do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and **obey the**

---

[20] BAR MATTER 850. MANDATORY CONTINUING LEGAL EDUCATION. "ADOPTING THE REVISED RULES ON THE CONTINUING LEGAL EDUCATION FOR MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES." October 2, 2001.

[21] *Supra* note 6.

[22] *Supra* notes 2-5.

[23] *Intestate Estate of Jose Uy, herein represented by its administrator Wilson Uy v. Atty. Pacifico M. Maghari III*, A.C. No. 10525, September 1, 2015.

[24] *Id.*

laws as well as the legal orders of the duly constituted authorities therein; **I will do no falsehood, nor consent to the doing of any in cour**t; I will not wittingly or willingly promote or sue any groundless, false, or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and **will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients**; and I impose upon myself these, voluntary obligations without any mental reservation or purpose of evasion. So help me God. *(emphasis supplied)*

Also, Canon 1, Rule 1.01 of the Code of Professional Responsibility (CPR) provides:

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.

Canon 10, Rule 10.01 of the CPR likewise states:

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be mislead by any artifice.

In using a false MCLE compliance number in his pleadings, respondent also put his own clients at risk. Such deficiency in pleadings can be fatal to the client's cause as pleadings with such false information produce no legal effect.[25] In so doing, respondent violated his duty to his clients.[26] Canons 17 and 18 of the CPR provide:

CANON 17 – A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed upon him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

---

[25] *Id.*

[26] *Id.*

Third. The respondent also repeatedly failed to obey legal orders of the trial court, the IBP-CBD, and also this Court despite due notice. In the special civil action above-cited, the trial court directed the respondent to file a comment on a motion which raised in issue respondent's use of a false MCLE compliance number in his pleadings but he did not file any.[27] This Court also directed respondent to file a comment on the instant complaint but he failed to do so.[28] We then issued a show cause order against the respondent to explain why he should not be disciplined or held in contempt for failing to file the required comment but again, respondent did not heed this court's order.[29] The IBP-CBD also notified the respondent to appear before it for mandatory conference/hearing but the said notice was also ignored.[30]

Court orders should be respected not only because the authorities who issued them should be respected, but because of the respect and consideration that should be extended to the judicial branch of the government, which is absolutely essential if our government is to be a government of laws and not of men.[31]

Clearly, respondent's act of ignoring the said court orders despite notice violates the lawyer's oath and runs counter to the precepts of the CPR. By his repeated dismissive conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court.

Respondent's culpability is further highlighted by the fact that, as cited by the IBP Board of Governors in its resolution, respondent had already been sanctioned by the IBP twice. In a decision dated April 11, 2013 by this Court *en banc*, respondent was found guilty of engaging in notarial practice without a notarial commission, and

---

[27] *Rollo*, p. 66.

[28] *Supra* note 9.

[29] *Supra* note 10.

[30] *Supra* note 13-16.

[31] *Hon. Maribeth Rodriguez-Manahan, Presiding Judge, Municipal Trial Court, San Mateo, Rizal v. Atty. Rodolfo Flores,* A.C. No. 8954, November 13, 2013.

was thus suspended from the practice of law for two years with the warning that a repetition of the same or similar act in the future shall merit a more severe sanction.[32] In another decision dated May 31, 2016, this Court *en banc* again found respondent guilty of performing notarial acts without a notarial commission and was thus suspended from the practice of law for two years and barred permanently from being commissioned as notary public with a stern warning that a repetition of the same shall be dealt with severely.[33] It is noteworthy that in both cases, respondent already manifested his lack of regard, not only for the charges against him, but most importantly to the orders of the IBP and the courts. In the said cases, the respondent likewise failed to file answers, comments, or position papers, or attended mandatory conferences despite due notices.[34]

Taken altogether, considering respondent's act of using a false MCLE compliance number in his pleadings,[35] his repeated failure to obey legal orders,[36] and the fact that he had already been sanctioned twice by this Court on separate cases.[37] We are constrained to affirm the IBP Board of Governors' Resolution No. XXI-2014-685, recommending his disbarment to prevent him from further engaging in legal practice.[38] It cannot be overstressed that lawyers

---

[32] *Efiginia M. Tenoso v. Atty. Anselmo S. Echanez*, 709 Phil. 1 (2013).

[33] *Flora C. Mariano v. Atty. Anselmo S. Echanez*, A.C. No. 10373, May 31, 2016.

[34] *Supra* notes 31 and 32.

[35] *Supra* notes 2-5.

[36] *Supra* notes 9-16.

[37] *Supra* notes 18, 31, and 32.

[38] Rule 138, Sec. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or any gross misconduct in such office, grossly immoral conduct, or by reason of his conviction a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. xxx.

are instruments in the administration of justice.[39] As vanguards of our legal system, they are expected to maintain legal proficiency and a high standard of honesty, integrity, and fair dealing.[40] Also, of all classes and professions, the lawyer is most sacredly bound to uphold the laws.[41] He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them underfoot and ignore the very bonds of society, is unfaithful to his position and office and sets a detrimental example to the society.[42]

WHEREFORE, respondent Anselmo S. Echanez is hereby **DISBARRED** from the practice of law, and his name is **ORDERED STRICKEN FROM THE ROLL OF ATTORNEYS**. Let a copy of this Decision be entered in his record as a member of the Bar; and let notice 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.

SO ORDERED.

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

Mendoza and *Martires, JJ.,* on official leave.

---

[39] *Fidela Bengco and Teresita Bengco v. Atty. Pablo S. Bernardo*, 687 Phil. 7 (2012).

[40] *Id.*

[41] *Catherine & Henry Yu v. Atty. Antoniutti K. Palaña*, 580 Phil. 19 (2008).

[42] *Id.*

EN BANC

[A.C. No. 11533. June 6, 2017]

SPOUSES EDWIN and GRETA CHUA, *complainants, vs.* **SACP TERESA BELINDA G. TAN-SOLLANO, DCP MARIA GENE Z. JULIANDA-SARMIENTO, SDCP EUFROSINO A. SULLA, SACP SUWERTE L. OFRECIO-GONZALES, and DCP JOSELITO D.R. OBEJAS, ALL OF THE OFFICE OF THE CITY PROSECUTOR OF MANILA, RELATIVE TO I.S. NO. XV-07-INV-15J-05513**, *respondents.*

SYLLABUS

LEGAL ETHICS; GOVERNMENT LAWYERS; ADMINISTRATIVE PROCEEDINGS; WHERE THE COMPLAINANTS FAILED TO PRESENT SUBSTANTIAL EVIDENCE TO PROVE THE PROSECUTORS' CULPABILITY, THE PRESUMPTION THAT THEY HAVE REGULARLY PERFORMED THEIR OFFICIAL DUTIES WILL PREVAIL.— After a careful review of the records of the present case, the Court finds that Spouses Chua failed to attribute clear and preponderant proof to show that the respondents committed infractions in contravention with the standards provided for by the Code of Professional Responsibility which would have warranted the imposition of administrative sanctions against them. "In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint. Mere allegation is not evidence and is not equivalent to proof." Here, considering that spouses Chua failed to present substantial proof to show the prosecutors' culpability, the Court cannot rule out the possibility that the instant administrative case was ill motivated being retaliatory in nature and aimed at striking back at them for having participated in the dismissal of XV-07-INV-15J-05513, either as investigating prosecutor or approving officer. In the absence of contrary evidence, what will prevail is the presumption that the prosecutors involved herein have regularly performed their official duties.

RESOLUTION

REYES, *J.*:

For resolution is the administrative complaint[1] for disbarment filed by complainants Greta A. Chua (Greta) and Edwin S. Chua (Spouses Chua) against Senior Assistant City Prosecutor Teresa Belinda G. Tan-Sollano (SACP Tan-Sollano), Deputy City Prosecutor Maria Gene Z. Julianda-Sarmiento (DCP Julianda-Sarmiento), Senior Deputy City Prosecutor Eufrosino A. Sulla (SDCP Sulla), SACP Suwerte L. Ofrecio-Gonzales (SACP Ofrecio-Gonzales), and DCP Joselito D.R. Obejas (DCP Obejas) (collectively, the respondents) for grave abuse of discretion, ignorance of the law, abuse of power or authority, and gross misconduct.

Antecedent Facts

On October 12, 2015, Spouses Chua filed a Complaint[2] for Perjury and False Testimony against Atty. Rudy T. Tasarra (Atty. Tasarra), Luz O. Talusan (Talusan), Po Yi Yeung Go, Jessica W. Ang, Ricky Ang, Eden C. Uy, and Ana Tiu, before the Office of the City Prosecutor (OCP) of Manila docketed as XV-07-INV-15J-05513.

Spouses Chua alleged before the OCP of Manila that Talusan deliberately and wilfully committed perjury when she narrated in her Complaint-Affidavits that on July 11, 2009, Spouses Chua issued 11 post-dated checks in favor of Chain Glass Enterprises, Inc. (CGEI), with an amount of ₱112,521.00 each, as payment for assorted glass and aluminum products. According to Spouses Chua, however, the said statement is not true because the said 11 post-dated checks were actually issued on February 23, 2009 by Greta in replacement of their previous bounced checks. Likewise, Atty. Tasarra and the members of the Board of Directors of CGEI were likewise impleaded therein for offering Talusan's testimony.[3]

---

[1] *Rollo,* pp. 2-34.

[2] *Id.* at 35-40.

[3] *Id.* at 41-42.

In a Resolution[4] dated December 28, 2015, SACP Tan-Sollano recommended the dismissal of the charges against therein respondents for lack of probable cause. The same was recommended for approval by DCP Julianda-Sarmiento and SDCP Sulla.

A Motion for Reconsideration[5] was filed by Spouses Chua but the same was denied in a Resolution[6] dated August 9, 2016 issued by SACP Ofrecio-Gonzales and approved by DCP Obejas after finding no cogent reason to reverse the Resolution dated December 28, 2015 of SACP Tan-Sollano.

Aggrieved with such findings, Spouses Chua instituted the instant case and averred that the dismissal of XV-07-INV-15J-05513 was inappropriate and highly irregular considering that the prosecution offered an "airtight case/evidence."[7]

Ruling of the Court

After a careful review of the records of the present case, the Court finds that Spouses Chua failed to attribute clear and preponderant proof to show that the respondents committed infractions in contravention with the standards provided for by the Code of Professional Responsibility which would have warranted the imposition of administrative sanctions against them.

"In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint. Mere allegation is not evidence and is not equivalent to proof."[8]

Here, considering that Spouses Chua failed to present substantial proof to show the prosecutors' culpability, the Court cannot rule out the possibility that the instant administrative case was ill motivated being retaliatory in nature and aimed at striking back at them for having participated in the dismissal

---

[4] *Id*. at 41-45.

[5] *Id*. at 46-66.

[6] *Id*. at 69-70.

[7] *Id*. at 5.

[8] *Cruz-Villanueva v. Atty. Rivera,* 537 Phil. 409, 414-415 (2006).

of XV-07-INV-15J-05513, either as investigating prosecutor or approving officer. In the absence of contrary evidence, what will prevail is the presumption that the prosecutors involved herein have regularly performed their official duties.

Moreover, in *Maquiran v. Judge Grageda*,[9] the Court held that alleged error committed by judges in the exercise of their adjudicative functions cannot be corrected through administrative proceedings but should instead be assailed through judicial remedies.[10] Here, the same principle applies to prosecutors who exercise adjudicative functions in the determination of the existence of probable cause to hold the accused for trial in court.

Verily, an administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*.[11] In the present case, as narrated by Spouses Chua, XV-07-INV-15J-05513 is still pending and active. As such, Spouses Chua still has remedies to contest said ruling.

WHEREFORE, the instant administrative complaint against respondents Senior Assistant City Prosecutor Teresa Belinda G. Tan-Sollano, Deputy City Prosecutor Maria Gene Z. Julianda-Sarmiento, Senior Deputy City Prosecutor Eufrosino A. Sulla, Senior Assistant City Prosecutor Suwerte L. Ofrecio-Gonzales, and Deputy City Prosecutor Joselito D.R. Obejas is **DISMISSED** and this case is considered **CLOSED** and **TERMINATED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, and *Tijam, JJ.,* concur.

*Mendoza, J.,*on official leave.

Martirez, J., on leave.

---

[9] 491 Phil. 205 (2005).

[10] *Id.* at 230.

[11] *Atty. Amante-Descallar v. Judge Ramas*, 601 Phil. 21, 37 (2009).

EN BANC

[A.M. No. 16-12-03-CA. June 6, 2017]

RE: LETTER OF LUCENA OFENDOREYES ALLEGING ILLICIT ACTIVITIES OF A CERTAIN ATTY. CAJAYON INVOLVING CASES IN THE COURT OF APPEALS, CAGAYAN DE ORO CITY,

[IPI No. 17-248-CA-J. June 6, 2017]

RE: LETTER-COMPLAINT OF SYLVIA ADANTE CHARGING HON. JANE AURORA C. LANTION, ASSOCIATE JUSTICE, COURT OF APPEALS, CAGAYAN DE ORO CITY, and ATTY. DOROTHY CAJAYON WITH "SYSTEMATIC PRACTICES OF CORRUPTION."

SYLLABUS

REMEDIAL LAW; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS, JUDGES AND JUSTICES; ADMINISTRATIVE COMPLAINTS AGAINST LAWYERS, JUDGES, AND JUSTICES MUST BE VERIFIED AND SUPPORTED BY AFFIDAVITS OR DOCUMENTS THAT WOULD SUPPORT THE CHARGES MADE AGAINST THEM; FAILURE TO COMPLY WITH THE REQUIREMENTS WILL RESULT IN THE OUTRIGHT DISMISSAL OF THE CASES.— Under the Rules of Court, administrative complaints both against lawyers and judges of regular and special courts as well as Justices of the Court of Appeals and the Sandiganbayan must be verified and supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations. x x x In these cases, it is evident that the herein complaints lacked the foregoing requirements. Complainants' respective single page letter-complaints are indisputably unverified, and bereft of any supporting affidavits or documents that would support the charges made against herein respondents. Overall, they contain bare allegations that, unfortunately, have no factual or legal anchorage.

> Moreover, it appears that complainants did not have personal knowledge of the acts imputed against respondents as they merely relied on hearsay to support their claims. x x x Thus, considering that the complainants not only failed to comply with the formal requirements provided in the Rules of Court, but also did not present evidence to lend any ostensible merit to their letter-complaints that accuse herein respondents of serious ethical violations (*i.e.*, bidding out court decisions in favor of moneyed clients), the Court finds no proper conclusion other than to dismiss outright the present cases.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

These consolidated administrative matters arose from the letter-complaints respectively filed by Sylvia Adante (Adante) and Lucena Ofendoreyes (Ofendoreyes)[1] both charging a certain Atty. Dorothy Cajayon (Atty. Cajayon) from Zamboanga City and Associate Justice Jane Aurora C. Lantion (Justice Lantion) of the Court of Appeals in Cagayan De Oro City (CA-CDO) of illicitly selling favorable decisions involving cases filed in the CA-CDO to the highest bidding clients.

The Facts

On October 17, 2016, Adante filed before the Office of the Ombudsman (Ombudsman) a letter,[2] alleging that it was "intimated to [her]" that Atty. Cajayon, whom she met only once, was in cahoots with Justice Lantion in engaging in the shameful business of "selling" decisions involving cases from the CA-CDO to the highest bidder.

Subsequently, or on October 25, 2017, Ofendoreyes filed before the same agency a letter,[3] requesting the latter to

---

[1] Inadvertently mentioned as "Ofendorajes" in the record (see *rollo* [A.M. No. 16-12-03-CA], p. 1).

[2] Dated October 15, 2016. See *rollo* (IPI No. 17-248-CA-J), p. 3.

[3] Dated October 17, 2016. See *rollo* (A.M. No. 16-12-03-CA), p. 2.

investigate and stop the purported partnership of Atty. Cajayon and Justice Lantion from the business of selling decisions in exchange for money.

Both letter-complaints were respectively referred by the Ombudsman to this Court on November 22, 2016[4] and November 23, 2016,[5] which were, consequently, docketed as IPI No. 17-248-CA-J and A.M. No. 16-12-03-CA. In a Resolution[6] dated January 10, 2017, the Court referred the administrative matters to the Office of the Court Administrator (OCA) to study the possible consolidation of the same.

The OCA's Report and Recommendation

In a Memorandum[7] dated February 14, 2017, the OCA recommended that the matters be consolidated,[8] considering that both letter-complaints involve the same respondents, *i.e.*, Atty. Cajayon and Justice Lantion, and issue, *i.e.*, the sale of favorable decisions involving cases in the CA-CDO to the highest bidder.

The OCA, however, observed that the letter-complaints were insufficient in form and substance in that they: (1) were not verified; and (2) lacked affidavits of persons who may have personal knowledge of the facts to prove or substantiate the letter-complaints' allegations against respondents, as well as supporting documents. Moreover, it echoed the rule that in administrative proceedings, the burden of proof that the respondent committed the acts complained of rests on the

---

[4] See endorsement letter dated November 7, 2016; *rollo* (IPI No. 17-248-CA-J), p. 2.

[5] See endorsement letter dated October 28, 2016; *rollo* (A.M. No. 16-12-03-CA), p. 1.

[6] See *rollo* (IPI No. 17-248-CA-J), p. 4 and *rollo* (A.M. No. 16-12-03-CA), p. 4.

[7] See *rollo* (IPI No. 17-248-CA-J), pp. 5-6 and *rollo* (A.M. No. 16-12-03-CA), pp. 5-6.

[8] The said consolidation was approved and granted by the Court in its Minute Resolution dated March 7, 2017.

complainant, and that in the absence of evidence against a court employee or magistrate to discipline for a grave offense, the presumption that the respondent has regularly performed his duties will prevail.[9]

The Issue Before the Court

The sole issue is whether or not Atty. Cajayon and Justice Lantion should be held administratively liable.

The Court's Ruling

Under the Rules of Court, administrative complaints both against lawyers and judges of regular and special courts as well as Justices of the Court of Appeals and the Sandiganbayan must be verified and supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations.

For lawyers, these requirements are stated in Section 1, Rule 139-B of the Rules of Court:

> SECTION 1. *How Instituted.* — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu propio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. **The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts**. (Emphasis and underscoring supplied)

Meanwhile, for judges and Justices of the Court of Appeals and the Sandiganbayan, the requirements are found in Section 1, Rule 140 of the Rules of Court:[10]

> SECTION 1. *How instituted.* — Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of

---

[9] See *rollo* (IPI No. 17-248-CA-J), pp. 5-6 and *rollo* (A.M. No. 16-12-03-CA), pp. 5-6.

[10] As amended by A.M. No. 01-8-10-SC, entitled "RE: PROPOSED AMENDMENT TO RULE 140 OF THE RULES OF COURT RE DISCIPLINE OF JUSTICES AND JUDGES" (September 11, 2001).

Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon **a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations**, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Courts or the Code of Judicial Conduct. (Emphasis and underscoring supplied)

In this relation, Section 2 of Rule 140 states that:

SECTION 2. *Action on the complaint*. — If the complaint is sufficient in form and substance, a copy thereof shall be served upon the respondent, and he shall be required to comment within ten (10) days from the date of service. **Otherwise, the same shall be dismissed**. (Emphasis supplied)

In these cases, it is evident that the herein complaints lacked the foregoing requirements. Complainants' respective single page letter-complaints are indisputably unverified, and bereft of any supporting affidavits or documents that would support the charges made against herein respondents. Overall, they contain bare allegations that, unfortunately, have no factual or legal anchorage.

Moreover, it appears that complainants did not have personal knowledge of the acts imputed against respondents as they merely relied on hearsay to support their claims. For one, Adante clearly stated in her letter-complaint that the alleged offense was only "intimated to [her],"[11] while Ofendoreyes simply asks the Court to "investigate and stop"[12] the said illicit activities without providing any further details on the information. The Court has emphasized that "to satisfy the substantial evidence requirement for administrative cases, hearsay evidence should

---

[11] *Rollo* (IPI No. 17-248-CA-J), p. 3.

[12] *Rollo* (A.M. No. 16-12-03-CA), p. 2.

necessarily be supplemented and corroborated by other evidence that are not hearsay,"[13] which, however, was not presented here.

Jurisprudence dictates that in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence. If they fail to show in a satisfactory manner the facts upon which their claims are based, the respondents are not obliged to prove their exception or defense.[14] The same goes with administrative cases disciplining for grave offense court employees or magistrates. The evidence against the respondent should be competent and should be derived from direct knowledge.[15]

Thus, considering that the complainants not only failed to comply with the formal requirements provided in the Rules of Court, but also did not present evidence to lend any ostensible merit to their letter-complaints that accuse herein respondents of serious ethical violations (*i.e.*, bidding out court decisions in favor of moneyed clients), the Court finds no proper conclusion other than to dismiss outright the present cases.

WHEREFORE, the complaints are **DISMISSED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Reyes, Leonen, Jardeleza, Caguioa, and *Tijam, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

---

[13] See *Re: Verified Complaint dated July 13, 2015 of Umali, Jr. v. Hernandez*, IPI No. 15-35-SB-J, February 23, 2016, 784 SCRA 483, 492.

[14] See *Bruselas, Jr. v. Mallari*, A.C. No. 9683, IPI No. 17-250-CA-J, IPI No. 17-251-CA-J, *et al.*, February 21, 2017.

[15] *The Law Firm of Chavez Miranda Aseoche v. Dicdican*, 600 Phil. 65, 69 (2009).

EN BANC

[A.M. No. P-06-2279. June 6, 2017]
(Formerly OCA IPI No. 06-2452-P)

MAURA JUDAYA and ANA AREVALO, *complainants, vs.* **RAMIRO F. BALBONA, Utility Worker I, Office of the Clerk of Court, Regional Trial Court of Cebu City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; THE RESIGNATION OF A GOVERNMENT EMPLOYEE CHARGED WITH AN OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE DOES NOT RENDER MOOT THE ADMINISTRATIVE CASE AGAINST HIM.—** [T]he precipitate resignation of a government employee charged with an offense punishable by dismissal from service does not render moot the administrative case against him. The Court's pronouncement in *Pagano v. Nazarro, Jr*. is instructive on this matter x x x. Here, the Executive Judge of the RTC and the OCA correctly pointed out that respondent's failure to report for work, which eventually caused him to be declared in AWOL, and his resignation during the pendency of the investigation against him did not render this administrative case moot and academic, especially so that he is being charged with an offense punishable by dismissal from service.
2. **ID.; ID.; ID.; ID.; TO WARRANT DISMISSAL FROM SERVICE, THE MISCONDUCT MUST IMPLY WRONGFUL INTENTION AND MUST ALSO HAVE A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF THE PUBLIC OFFICER'S OFFICIAL DUTIES.—** "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment

and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate [grave] misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former."

3. **ID.; ID.; ID.; ID.; THE ACTS OF SOLICITING AND RECEIVING MONEY FROM LITIGANTS FOR PERSONAL GAINS, A CASE OF.—** In order to sustain a finding of administrative culpability for such offense, only substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. A judicious review of the records of this case reveals substantial evidence showing that respondent indeed solicited and received the amount of ₱30,000.00 from complainants, on the pretext that he will facilitate the release of the latter's relative who is a detention prisoner. This is a direct violation of Section 2, Canon I and Section 2 (e), Canon III of the Code of Conduct for Court Personnel x x x. In a catena of cases, the Court has consistently held that the acts of soliciting and receiving money from litigants for personal gain constitute Grave Misconduct, for which the court employee guilty thereof should be held administratively liable, as in this case.

4. **ID.; ID.; ID.; ID.; CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE FOR THE FIRST OFFENSE AND THE PENALTY CARRIES WITH IT ADMINISTRATIVE DISABILITIES.—** Anent the proper penalty to be imposed on respondent, the Court notes that Grave Misconduct is classified as a grave offense punishable by dismissal from service for the first offense. "Corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: (*a*) cancellation of civil service eligibility; (*b*) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (*c*) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution." In this instance, since respondent had earlier resigned, the penalty of dismissal

from service could no longer be imposed. Nevertheless, such penalty should be enforced in its full course by imposing the aforesaid administrative disabilities upon him.

DECISION

PERLAS-BERNABE, *J.*:

For the Court's resolution is an Amended Affidavit[1] dated May 29, 2006 filed by complainants Maura Judaya and Ana Arevalo (complainants) against respondent Ramiro F. Balbona (respondent), Utility Worker I, Office of the Clerk of Court, Regional Trial Court of Cebu City (RTC), for Grave Misconduct.

The Facts

In the Amended Affidavit, complainants alleged that they are the mother and live-in partner, respectively, of one Arturo Judaya (Arturo), who was arrested purportedly for the use of illegal drugs. Complainants were then told that respondent could facilitate Arturo's release in exchange for ₱30,000.00. Thus, at 9:30 in the morning of February 24, 2005, complainants went to the Palace of Justice, Capitol, Cebu City to deliver the said amount to respondent, who then assured them that he would help secure Arturo's release. Respondent, however, failed to perform his undertaking; thus the demand to return the money. Out of the ₱30,000.00, respondent only returned ₱2,500.00 to complainants; hence, the instant complaint.[2]

In his defense, respondent essentially denied the accusations against him, maintaining that as a mere utility worker, he could not in any way facilitate the release of a detention prisoner. He likewise denied personally knowing complainants and receiving money from them. In this relation, respondent pointed out that he is stationed at the Cebu City Palace of Justice, while the

---

[1] *Rollo*, pp. 7-8. See also complainants' initial Affidavit dated February 21, 2006; *id*. at 13-14.

[2] *Id*. See also *id*. at 83-84.

case of Arturo was pending at Branch 55 of the RTC, which was located in Mandaue City. Finally, respondent asserted that it is contrary to human experience for complainants to simply hand over a large amount of money to a complete stranger; that complainants' act of doing so for the release of a prisoner was illegal and showed their lack of moral fitness; and that complainants have no one to blame but themselves for the consequences of their act.[3]

In light of the seriousness of the accusations against respondent, the Court, as recommended by the Office of the Court Administrator (OCA), redocketed the case as a regular administrative matter and referred the same to the Executive Judge of the RTC for investigation, report, and recommendation.[4]

In a Report[5]dated December 21, 2015, the Executive Judge recommended respondent's dismissal on the ground of Grave Misconduct and Conduct Unbecoming of a Government Employee. It was disclosed that pending the instant proceedings, respondent stopped reporting for work, had been declared absent without official leave (AWOL), had resigned since September 20, 2007,[6] and eventually, his position was occupied by another person.[7] Despite the foregoing, the Executive Judge opined that the foregoing did not render the instant case moot and academic.[8] Subsequently, it was found that respondent's act of receiving money from complainants on the pretext that the latter will obtain a favorable ruling constitutes Grave Misconduct for which he should be held administratively liable.[9]

---

[3] See Comment dated July 17, 2006; *id*. at 16-17. See also 84.

[4] See Resolution dated November 29, 2006; *id*. at 24.

[5] *Id*. at 74-77. Penned by Executive Judge Soliver C. Peras.

[6] See "Komisyon" (KSS Porma Blg. 33) appointing Arvin S. Catarata to the position vacated by respondent, signed by Court Administrator Jose Midas P. Marquez on August 12, 2010; *id*. at 68, including dorsal portion.

[7] *Id*. at 75-76.

[8] *Id*. at 76.

[9] *Id*. at 77.

The OCA's Report and Recommendation

In a Memorandum[10] dated October 19, 2016, the OCA recommended that respondent be found guilty of Grave Misconduct, an offense punishable by dismissal from service under Section 2 (e), Canon III, of the Code of Conduct for Court Personnel.[11] It found substantial evidence showing that respondent indeed solicited and received money from complainants. However, since such penalty could no longer be imposed on respondent due to his separation from service during the pendency of the investigation against him, the OCA recommended that he be, instead, meted the accessory penalties appurtenant to the same, namely: cancellation of civil service eligibility, forfeiture of retirement benefits; and perpetual disqualification from holding public office and from taking civil service examinations.[12]

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not respondent should be held administratively liable for Grave Misconduct.

The Court's Ruling

The Court adopts the findings and recommendations of the OCA.

Preliminarily, it is worthy to emphasize that the precipitate resignation of a government employee charged with an offense punishable by dismissal from service does not render moot the administrative case against him. The Court's pronouncement in *Pagano v. Nazarro, Jr.*[13] is instructive on this matter, to wit:

---

[10] *Id*. at 83-88. Signed by Deputy Court Administrators Raul Bautista Villanueva and Jenny Lind R. Aldecoa-Delorino.

[11] See *id*. at 86 and 88.

[12] *Id*. at 87-88.

[13] 560 Phil. 96 (2007).

In [*OCA*] *v. Juan* [(478 Phil. 823, 828-829 [2004])], this Court categorically ruled that **the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable.**

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. **The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions – that of separation from service – may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.**

Moreover, this Court views with suspicion the precipitate act of a government employee in effecting his or her separation from service, soon after an administrative case has been initiated against him or her. An employee's act of tendering his or her resignation immediately after the discovery of the anomalous transaction is indicative of his or her guilt as flight in criminal cases.[14] (Emphases and underscoring supplied)

Here, the Executive Judge of the RTC and the OCA correctly pointed out that respondent's failure to report for work, which eventually caused him to be declared in AWOL, and his resignation during the pendency of the investigation against him did not render this administrative case moot and academic, especially so that he is being charged with an offense punishable by dismissal from service.

In this light, the Court shall now delve into respondent's administrative liability.

---

[14] *Id.* at 105; citations omitted.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate [grave] misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former."[15]

In order to sustain a finding of administrative culpability for such offense, only substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[16]

A judicious review of the records of this case reveals substantial evidence showing that respondent indeed solicited and received the amount of ₱30,000.00 from complainants, on the pretext that he will facilitate the release of the latter's relative who is a detention prisoner. This is a direct violation of Section 2, Canon I and Section 2 (e), Canon III of the Code of Conduct for Court Personnel,[17] which respectively read:

CANON I
FIDELITY TO DUTY

x x x x x x x x x

Section 2. Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit or implicit understanding that such gift, favor or benefit shall influence their official actions.

---

[15] *OCA v. Viesca*, 755 Phil. 385, 396 (2015), citing *OCA v. Amor*, 745 Phil. 1, 8 (2014).

[16] See *OCA v. Lopez*, 654 Phil. 602, 607 (2011).

[17] A.M. No. 03-06-13-SC (June 1, 2004).

CANON III
CONFLICT OF INTEREST

x x x x x x x x x

Section 2. Court personnel shall not:

x x x x x x x x x

(e) Solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties.

In a catena of cases, the Court has consistently held that the acts of soliciting and receiving money from litigants for personal gain constitute Grave Misconduct, for which the court employee guilty thereof should be held administratively liable,[18] as in this case.

Anent the proper penalty to be imposed on respondent, the Court notes that Grave Misconduct is classified as a grave offense punishable by dismissal from service for the first offense.[19] "Corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution."[20] In this instance, since respondent had earlier resigned, the penalty of dismissal from service could no longer be imposed.

---

[18] See *Re: Incident Report Relative to a Criminal Case Filed Against Garduce*, A.M. No. P-15-3391, November 16, 2015, 775 SCRA 35, 38-40; *Bacbac-Del Isen v. Molina*, A.M. No. P-15-3322, June 23, 2015, 760 SCRA 289, 295-299; *Galindez v. Susbilla-De Vera*, 726 Phil. 1, 6-9 (2014); and *Dela Cruz v. Malunao*, 684 Phil. 493, 502-506 (2012).

[19] See *Lagado v. Leonido*, 741 Phil. 102, 107 (2014).

[20] *Id*.

Nevertheless, such penalty should be enforced in its full course by imposing the aforesaid administrative disabilities upon him.[21]

As a final note, "[i]t must be emphasized that those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Institution demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. As such, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public."[22]

WHEREFORE, respondent Ramiro F. Balbona, former Utility Worker I, Office of the Clerk of Court, Regional Trial Court of Cebu City, is found **GUILTY** of Grave Misconduct and would have been **DISMISSED** from service, had he not earlier resigned. Accordingly, his civil service eligibility is hereby **CANCELLED**, his retirement and other benefits, except accrued leave credits, are **FORFEITED**, and he is **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Reyes, Leonen, Jardeleza, Caguioa, and *Tijam, JJ.,* concur.

Mendoza and *Martires, JJ.*, on official leave.

---

[21] See *id*. at 108.

[22] *Id*., citing *OCA v. Acampado*, 721 Phil. 12, 31-32 (2013).

EN BANC

[A.M. No. MTJ-16-1870. June 6, 2017]
(Formerly OCA I.P.I. No. 16-2833-MTJ)

RE: ANONYMOUS LETTER COMPLAINT, *complainant, vs.* **JUDGE DIVINA T. SAMSON, Municipal Circuit Trial Court, Mabini-Pantukan, Compostela Valley, and UTILITY WORKER FRANCISCO M. ROQUE, JR.**, **Municipal Circuit Trial Court, Mabini-Pantukan, Compostela Valley,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; PROBATION LAW; PROBATION; THE GRANT OF PROBATION SUSPENDS THE IMPOSITION OF THE PRINCIPAL PENALTY OF IMPRISONMENT AND THE ACCESSORY PENALTY OF SUSPENSION FROM THE RIGHT TO FOLLOW A PROFESSION OR CALLING.—** [T]he fact that respondent Roque was still a probationer when he applied for the position of Utility Worker and accomplished his Personal Data Sheet did not disqualify him from applying for the position. In ***Moreno v. Commission on Elections***, the Court clarified that the grant of probation suspends the imposition of the principal penalty of imprisonment as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. x x x [W]hen respondent Roque was granted probation, not only was the imposition of the principal penalty of imprisonment suspended, but the accessory penalty of suspension from the right to follow a profession or calling was also suspended. Hence, respondent Roque retained the right to seek employment and was, therefore, not disqualified to apply for the position of utility worker in the court when he was still a probationer.
2. **ID.; ID.; CONFIDENTIALITY OF RECORDS; CANNOT BE INVOKED TO JUSTIFY THE NON-DISCLOSURE OF THE PROBATIONER IN HIS PERSONAL DATA SHEET (PDS) OF THE FACT THAT HE HAD BEEN FORMALLY**

CHARGED AND CONVICTED OF AN OFFENSE, FOR THE ACCOMPLISHMENT OF THE PDS IS A REQUIREMENT FOR EMPLOYMENT IN THE GOVERNMENT.— [R]espondent Roque had the obligation to disclose the fact that he had been formally charged and convicted of an offense in his Personal Data Sheet and cannot justify his non-disclosure of such fact by invoking the confidentiality of his records under the Probation Law. Under Section 17 of the Probation Law, the confidentiality of records of a probationer refers to the investigation report and supervision history of a probationer taken under the said law, which records shall not be disclosed to anyone other than the Probation Administration or the court concerned. However, the Probation Administration and the court concerned have the discretion to allow disclosure of the confidential records to specific persons and the government office/agency stated in the Probation Law. The confidentiality of the said records is different from respondent Roque's obligation to answer truthfully the questions in his Personal Data Sheet, as the accomplishment of the Personal Data Sheet is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. The Personal Data Sheet is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility. Respondent Roque, therefore, had the obligation to reveal the fact that he had been formally charged and convicted of a criminal offense to enable the Selection and Promotion Board for Lower Courts to correctly determine his qualification for the position applied for. The Office of the Court Administrator aptly stated that by respondent Roque's false statement in his Personal Data Sheet making it appear that he had a spotless record, he gained unwarranted advantage over other qualified individuals, especially that he was also recommended by respondent Judge Samson for the position.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; A FALSIFICATION IN THE PERSONAL DATA SHEET IS A DISHONEST ACT RELATED TO EMPLOYMENT; PENALTY IN CASE AT BAR.—** The falsification in respondent Roque's Personal Data Sheet is a dishonest act related to his employment. Dishonesty is the concealment or distortion

of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intention to violate the truth. CSC Resolution No. 06-0538 provides the rules on classifying the offense of Dishonesty and the proper penalty to be imposed based on the factual circumstances of the case. x x x As the Court has stated in the recent case of ***Alfornon v. Delos Santos***, we do not automatically dismiss dishonest government employees; rather, their penalty would depend on the gravity of their dishonesty. Rule IV, Section 53 of the Civil Service Rules provides mitigating circumstances, among others, that may be allowed to modify the penalty, such as length of service in the government, good faith, and other analogous circumstances. Jurisprudence is replete with cases where we lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances. x x x In the instant case of respondent Roque, the penalty of suspension for six months without pay is proper, considering that he was already discharged from probation on July 18, 2008 when he was appointed to the position of Utility Worker I on October 17, 2008, or he was appointed to the position almost three months after his discharge from probation, and he has been in the government service for almost nine years as a reformed member of society. We take the benevolent stance to give him a chance to serve in the government, as this is his first offense as an employee in the Judiciary.

4. REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; GROSS MISCONDUCT; VIOLATIONS OF THE CODE OF JUDICIAL CONDUCT, A CASE OF; PENALTY.— As the Presiding Judge of the Court, respondent Judge Samson should have been circumspect and waited for the final discharge of respondent Roque before she entertained his application and gave him her favorable recommendation, as it is only upon the final discharge of respondent Roque from probation that his case is deemed terminated and all his civil rights lost or suspended are restored. Her act violates Canon 2 of the Code of Judicial Conduct x x x. Under Rule 140 of the Rules of Court, gross misconduct constituting violations of the Code of Conduct is a serious charge which may be sanctioned by: (1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-

owned or controlled corporations; Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

D E C I S I O N

PERALTA, *J*.:

This is an administrative complaint against respondent Judge Divina T. Samson of the Municipal Circuit Trial Court (*MCTC*) of Mabini-Pantukan, Compostela Valley for misconduct and against respondent Francisco M. Roque, Jr., a utility worker in the court of respondent Judge Samson, for dishonesty and falsification.

The facts are as follows:

On July 11, 2013, the Office of the Court Administrator (*OCA*) received an anonymous letter-complaint[1] charging respondent Judge Divina T. Samson with misconduct for hiring co-respondent Francisco M. Roque, Jr. as Utility Worker I in her court despite knowing that respondent Roque was convicted in Criminal Case No. 13388[2] for illegal possession of explosives, as she was the public prosecutor who handled the case, and for knowingly abetting the concealment of such fact, which led to Roque's appointment in the Judiciary. The complaint also charged respondent Roque with dishonesty and falsification for the untruthful entries he made in his Personal Data Sheet, particularly that he had not been formally charged and convicted of an offense.

Respondent Roque was convicted of the crime of illegal possession of explosives[3] in Criminal Case No. 13388 by the

---

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

[2] *Id.* at 4; entitled "*People v. Francisco Roque, Jr*."

[3] Presidential Decree No. 1866 (1983), Sec. 3.

Regional Trial Court (*RTC*) of Tagum City, Branch 1, Davao del Norte in an Order issued on June 1, 2005. Respondent Roque was sentenced to suffer an indeterminate penalty of six months of *arresto mayor*, as minimum, to three years, six months and twenty days of *prision correccional*, as maximum, including all the accessory penalties provided by law. Respondent Roque immediately applied for probation, which was granted by the RTC of Tagum City, Branch 1 in an Order dated July 25, 2005. Upon the motion of Lily Anne B. Cabonce, Probation and Parole Officer II of Davao City, respondent Roque was discharged from his probation by Executive Judge Isaac G. Robillo, Jr. of the RTC of Davao on July 18, 2008.

Respondent Roque applied for the position of Utility Worker I in the court of respondent Judge Samson. Despite having been convicted of the crime of illegal possession of explosives, in his Personal Data Sheet dated June 12, 2008, Roque answered "No" to these questions:

> 37.a. Have you ever been formally charged?
> 38. Have you ever been convicted of any crime or violation of any law, decree, ordinance or regulation by any court or tribunal?

Respondent Judge Samson, who knew of respondent Roque's conviction of the crime of illegal possession of explosives, as she was the public prosecutor who handled his case, favorably recommended respondent Roque for the position of Utility Worker I in her court even if she knew that he was not yet discharged from probation at that time. Respondent Roque was appointed to the position on October 17, 2008 and started working as Utility Worker on the said date.

The complainant alleged that the position of Clerk II in the trial court remains vacant despite the availability of several qualified applicants for the reason that respondent Judge Samson is reserving it for someone else, presumably respondent Roque. Moreover, an employee named Janet G. dela Cruz allegedly continues to hold the position of Court Stenographer I despite her incompetence and lack of knowledge about the job.

Further, the complainant alleged that respondent Judge Samson has been tolerating the daily presence in her sala of her 62-year-old sister Rachel Tabanyag-Verzola, who wears the court uniform although she is not a court employee. Complainant said that Verzola is like a fixer/swindler and she entertains litigants, including those who wish to be wed by respondent Judge Samson.

In her Comment,[4] respondent Judge Samson admitted that she knew that respondent Roque was convicted of the crime of illegal possession of explosives. However, she countered that the hiring of respondent Roque as Utility Worker I was not irregular, but proper, because he was already discharged after having served his probation. She inquired from Edgar Perez and Florida Ayaso, both from the Probation and Parole Office of Davao del Norte, as to the propriety of respondent Roque's application and, likewise, sought the recommendation of then Executive Judge Hilarion Clapiz, Jr. on the matter. They all assured her that a final discharge of a probation restores all civil rights lost or suspended as a result of the conviction.

Respondent Judge Samson dismissed as preposterous the insinuation that she was reserving the position of Clerk II for respondent Roque, since he is only a high school graduate and not qualified for the position requiring civil service eligibility and two years of college education.

Respondent Judge Samson did not address the allegation that she had been tolerating the presence in her sala of her older sister Rachel Verzola, who allegedly wears the official uniform even if she is not a court employee. However, she dismissed the charge that Verzola was a fixer/swindler as malicious. She challenged the complainant to come up with evidence of fixing or swindling and file the charge in court, and she will step down from her position if the charge is proved. She suspected that the anonymous complainant was Nelda Britanico, a court stenographer in her sala, who allegedly has a penchant for filing

[4] *Rollo,* pp. 35-42.

anonymous complaints to conceal her inefficiency and incompetency at work.

Respondent Judge Samson prayed that the complaint be dismissed for lack of cause of action.

In his Affidavit[5] dated October 23, 2013, respondent Roque admitted that he was convicted in Criminal Case No. 13388. He said that he was a probationer from June 2005 to July 2008. He was discharged from probation on July 18, 2008 by virtue of an Order issued on the same date by then Executive Judge Isaac G. Robillo, Jr. of the RTC of Davao City.

Respondent Roque stated that during his probation, he attended several seminars and open forum where he asked Probation Officer Lily Anne Cabonce if probationers could be employed or travel abroad after having been discharged by the court. Cabonce replied in the affirmative and assured him that his discharge from probation would restore his civil rights and his probation record would be considered confidential and would not be opened to the public except upon court order.

Respondent Roque said that he learned about the vacant position of Utility Worker I at the MCTC of Mabini-Pantukan, Compostela Valley, so he applied for the said position in order to support himself and his son. When he applied for the position, respondent Judge Samson told him that she would refer his case first to the Provincial Probation Officer Edgar Perez. Respondent Roque averred that his application was made in good faith and based on the assurance of his probation officer and the favorable result of the referral of his application by respondent Judge Samson to the Probation Office. Further, respondent Roque said that when he applied for clearance from the National Bureau of Investigation (*NBI*), his conviction and probation were not indicated in his NBI clearance.

This administrative case raises these issues:

(1) Whether or not respondent Roque is liable for dishonesty and falsification for failing to disclose in his Personal Data Sheet

---

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

that he was charged of a criminal offense and convicted of the crime charged.

(2) Whether or not respondent Judge Samson is liable for violation of the Code of Judicial Conduct for her complicity in the appointment of respondent Roque to the judiciary despite knowing that he was not yet discharged from probation when he applied for the position of Utility Worker I in her court.

On February 15, 2016, the OCA submitted a Report[6] and recommended that this complaint be re-docketed as a regular administrative matter. It found respondent Roque guilty of dishonesty and falsification of his Personal Data Sheet and recommended his dismissal from the government service, while it found respondent Judge Samson guilty of misconduct and recommended that she be fined in the amount of ₱20,000.00. Moreover, the OCA found that the other allegations against respondent Judge Samson on appointing an underqualified employee, Janet dela Cruz, and allowing her sister Rachel Versola to be a fixer in her court to be unsubstantiated with substantial evidence.

The Court agrees with the findings of the OCA, but modifies the recommended penalties to be imposed.

In regard to respondent Roque, Executive Judge Isaac G. Robillo, Jr. of the RTC of Davao City issued an Order discharging him from probation on July 18, 2008. However, the records show that respondent Roque applied for the position of Utility Worker I in June and accomplished his Personal Data Sheet on June 12, 2008 before he was discharged from probation. It is clear that when respondent Roque applied for the position of Utility Worker I, he was still a probationer.

However, the fact that respondent Roque was still a probationer when he applied for the position of Utility Worker and accomplished his Personal Data Sheet did not disqualify him from applying for the position. In ***Moreno v. Commission on Elections***,[7] the Court clarified that the grant of probation

[6] *Id.* at 67-73.

[7] 530 Phil. 279 (2006).

suspends the imposition of the principal penalty of imprisonment as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. It held:

> In *Baclayon v. Mutia*, the Court declared that an order placing defendant on probation is not a sentence but is rather, in effect, a suspension of the imposition of sentence. We held that the grant of probation to petitioner suspended the imposition of the principal penalty of imprisonment, as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. We thus deleted from the order granting probation the paragraph which required that petitioner refrain from continuing with her teaching profession.
>
> Applying this doctrine to the instant case, the accessory penalties of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, attendant to the penalty of arresto mayor in its maximum period to prision correccional in its minimum period imposed upon Moreno were similarly suspended upon the grant of probation.
>
> It appears then that during the period of probation, the probationer is not even disqualified from running for a public office because the accessory penalty of suspension from public office is put on hold for the duration of the probation.
>
> Clearly, the period within which a person is under probation cannot be equated with service of the sentence adjudged. Sec. 4 of the Probation Law specifically provides that the grant of probation suspends the execution of the sentence. During the period of probation, the probationer does not serve the penalty imposed upon him by the court but is merely required to comply with all the conditions prescribed in the probation order.[8]

From the foregoing jurisprudence, it is clear that when respondent Roque was granted probation, not only was the imposition of the principal penalty of imprisonment suspended, but the accessory penalty of suspension from the right to follow

---

[8] *Id.* at 288-289.

a profession or calling was also suspended. Hence, respondent Roque retained the right to seek employment and was, therefore, not disqualified to apply for the position of utility worker in the court when he was still a probationer. However, respondent Roque had the obligation to disclose the fact that he had been formally charged and convicted of an offense in his Personal Data Sheet and cannot justify his non-disclosure of such fact by invoking the confidentiality of his records under the Probation Law.

Under Section 17[9] of the Probation Law, the confidentiality of records of a probationer refers to the investigation report and supervision history of a probationer taken under the said law, which records shall not be disclosed to anyone other than the Probation Administration or the court concerned. However, the Probation Administration and the court concerned have the discretion to allow disclosure of the confidential records to specific persons and the government office/agency stated in the Probation Law. The confidentiality of the said records is different from respondent Roque's obligation to answer truthfully the questions in his Personal Data Sheet, as the accomplishment of the Personal Data Sheet is a requirement under the Civil Service Rules and Regulations in connection with employment in the government.[10] The Personal Data Sheet is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility.[11]

---

[9] P.D. No. 968, Sec. 17. Confidentiality of Records. —The **investigation report and the supervision history of a probationer obtained under this Decree** shall be privileged and shall not be disclosed directly or indirectly to anyone other than the Probation Administration or the court concerned, except that the court, in its discretion, may permit the probationer or his attorney to inspect the aforementioned documents or parts thereof whenever the best interest of the probationer makes such disclosure desirable or helpful Provided, Further, That, any government office or agency engaged in the correction or rehabilitation of offenders may, if necessary, obtain copies of said documents for its official use from the proper court or the Administration. (Emphasis supplied.)

[10] *Inting v. Tanodbayan*, 186 Phil. 343, 348 (1980).

[11] *Advincula v. Dicen*, 497 Phil. 979, 990 (2005).

Respondent Roque, therefore, had the obligation to reveal the fact that he had been formally charged and convicted of a criminal offense to enable the Selection and Promotion Board for Lower Courts to correctly determine his qualification for the position applied for. The Office of the Court Administrator aptly stated that by respondent Roque's false statement in his Personal Data Sheet making it appear that he had a spotless record, he gained unwarranted advantage over other qualified individuals, especially that he was also recommended by respondent Judge Samson for the position.

The falsification in respondent Roque's Personal Data Sheet is a dishonest act related to his employment. Dishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intention to violate the truth.[12]

CSC Resolution No. 06-0538 provides the rules on classifying the offense of Dishonesty and the proper penalty to be imposed based on the factual circumstances of the case. The pertinent provisions of Resolution No. 060538 are as follows:

Section 2. **Classification of Dishonesty**—The classification of the offense of Dishonesty and their correspondent penalties are as follows:

a. Serious Dishonesty punishable by dismissal from the service.

b. Less Serious Dishonesty punishable by suspension from six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense.

c. Simple Dishonesty punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year suspension for the second offense; and dismissal from the service for the third offense.

Section 3. **Serious Dishonesty** — The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:

---

[12] CSC Resolution No. 060538, Sec. 2.

a. The dishonest act caused serious damage and grave prejudice to the Government;

b. The respondent gravely abused his authority in order to commit the dishonest act;

c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;

d. The dishonest act exhibits moral depravity on the part of the respondent;

e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;

f. The dishonest act was committed several times or in various occasions;

g. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets;

h. Other analogous circumstances.

The falsification in respondent Roque's Personal Data Sheet makes him liable for serious dishonesty under paragraph (e), which is penalized by dismissal from service.

As the Court has stated in the recent case of ***Alfornon v. Delos Santos***,[13] we do not automatically dismiss dishonest government employees; rather, their penalty would depend on the gravity of their dishonesty. Rule IV, Section 53 of the Civil Service Rules provides mitigating circumstances, among others, that may be allowed to modify the penalty, such as length of service in the government, good faith, and other analogous circumstances.[14] Jurisprudence is replete with cases where we

---

[13] G.R. No. 203657, July 11, 2016.

[14] *Office of the Court Administrator v. Aguilar*, 666 Phil. 11, 22-23 (2011).

lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances.[15] ***Office of the Court Administrator v. Aguilar***[16] enumerated cases[17] wherein the Court reduced the administrative penalties imposed for equitable and humanitarian reasons.

In ***Alfornon v. Delos Santos***,[18] the petitioner therein, when she became a permanent employee as Administrative Aide IV in the Municipality of Argao, Cebu, answered "No" to the question in her PDS about whether she had ever been formally charged despite the fact that she was previously charged with the crime of estafa in the RTC of Lapu-Lapu City, Cebu before she was employed in the government. The Court held that while the falsification in Alfornon's PDS can be considered as a dishonest act related to her employment, it found that suspension was the more proportionate penalty for her dishonesty. The Court considered Alfornon's continued service to the Municipality of Argao, Cebu since 2003, among others, in holding that she only deserved to be suspended for six 6 months, as her outright dismissal from the service would be too harsh.

---

[15] *Alfornon v. Delos Santos, supra* note 13, citing *Office of the Court Administrator v. Flores*, 603 Phil. 84, 93 (2009), citing *OCA v. Ibay*, 441 Phil. 474 (2002); *OCA v. Sirios*, 457 Phil. 42 (2003). See also *Office of the Court Administrator v. Aguilar*, *supra.*

[16] *Supra* note 13, at 23.

[17] *Id.* at 23-26, citing *Office of the Court Administrator v. Flores*, 603 Phil. 84 (2009); *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Larizza Paguio-Bacani*, *Branch Clerk of Court II, Municipal Trial Court of Meycauayan, Bulacan*, 611 Phil. 630 (2009); *Concerned Employee v. Roberto Valentin*, Clerk II, Records Division, *Office of the Court Administrator*, 498 Phil. 347 (2005); *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, 502 Phil. 264 (2005); *Atty. Reyes-Domingo v. Morales*, 396 Phil. 150 (2000); *Floria v. Sunga*, 420 Phil. 637 (2001); *Concerned Taxpayer v. Norberto Doblada, Jr.*, 507 Phil. 222 (2005); *De Guzman, Jr. v. Mendoza*, 493 Phil. 690 (2005).

[18] *Supra* note 13.

In ***In the Matter of: Anonymous Complaint for Dishonesty, Grave Misconduct and Perjury Committed by Judge Jaime E. Contreras (In His Capacity as then 4th Provincial Prosecutor of Libmanan, Camarines Sur)***,[19] respondent judge, in his application for a position in the Judiciary, failed to disclose in his Personal Data Sheet that a previous administrative case was filed against him when he was the 4th Assistant Provincial Prosecutor of Libmanan, Camarines Sur. The Court found him guilty of dishonesty and penalized him with suspension from the service for one year without pay, taking into account that he had been in the government service for more than 30 years and it was his first offense as a member of the bench.

In ***Office of the Court Administrator v. Flores***,[20] the respondent therein, who was a Court Legal Researcher II in the RTC of Quezon City, was charged with dishonesty for failure to disclose in her Personal Data Sheet her suspension and dismissal from her previous employment. The Court imposed the penalty of suspension for six months without pay, considering that respondent had been in the government service for 14 years and it was her first offense during her employment in the Judiciary.

In ***Advincula v. Dicen***,[21] the petitioner therein, who was the Provincial Agriculturist in Samar, declared in his Personal Data Sheet that there were no pending administrative and criminal cases against him and that he had not been convicted of any administrative offense, although there were pending criminal and administrative cases against him, and he had already been convicted of the administrative offense of simple misconduct. The Court affirmed the Decision and Resolution of the Court of Appeals affirming the Decision of the Office of the Ombudsman-Visayas that petitioner was guilty of misconduct and penalized with suspension from office for six months without pay.

---

[19] A.M. No. RTJ-16-2452, March 9, 2016.

[20] *Supra* note 14.

[21] *Supra* note 11.

In ***Yalung v. Pascua***,[22] respondent judge, in his application for promotion, misrepresented in his PDS that he had never been charged with violating any law, decree, ordinance or regulation despite the fact that two administrative cases and one criminal case had been filed against him, although these cases were later dismissed. The Court penalized him with suspension for six months, taking into consideration that he had been in the government service for 26 years and that he had no prior administrative record as the cases against him were eventually dismissed.

In the instant case of respondent Roque, the penalty of suspension for six months without pay is proper, considering that he was already discharged from probation on July 18, 2008 when he was appointed to the position of Utility Worker I on October 17, 2008, or he was appointed to the position almost three months after his discharge from probation, and he has been in the government service for almost nine years as a reformed member of society. We take the benevolent stance to give him a chance to serve in the government, as this is his first offense as an employee in the Judiciary.

As regards respondent Judge Samson, she contends that respondent Roque applied for the position of Utility Worker in her court *after* his discharge from probation, but the records show that respondent Roque accomplished his Personal Data Sheet on June 12, 2008 or more than a month *before* he was discharged from probation on July 18, 2008. When respondent Roque applied for the position of Utility Worker I in her court, respondent Judge Samson knew that he was not yet discharged from probation and yet she recommended respondent Roque for the position in a recommendation letter dated June 3, 2008, which forms part of the employment record of respondent Roque in the Court. As the Presiding Judge of the Court, respondent Judge Samson should have been circumspect and waited for the final discharge of respondent Roque before she entertained his application and gave him her favorable recommendation,

---

[22] 411 Phil. 765 (2001).

as it is only upon the final discharge of respondent Roque from probation that his case is deemed terminated and all his civil rights lost or suspended are restored.[23] Her act violates Canon 2 of the Code of Judicial Conduct, thus:

CANON 2 – A JUDGE SHOULD AVOID IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

Rule 2.01. – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

x x x x x x x x x

Rule 2.03. – A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

Under Rule 140 of the Rules of Court, gross misconduct constituting violations of the Code of Conduct is a serious charge which may be sanctioned by: (1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

---

[23] Presidential Decree No. 968, Sec. 16. Termination of Probation. — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted. The probationer and the probation officer shall each be furnished with a copy of such order.

WHEREFORE, the Court finds respondent Judge Divina T. Samson guilty of gross misconduct and imposes on her a fine in the amount of Twenty-five Thousand Pesos (₱25,000.00), while the Court finds respondent Francisco M. Roque, Jr. guilty of Serious Dishonesty and imposes on him the penalty of suspension for six (6) months without pay, with a stern warning that the commission of a similar offense shall be dealt with more severely.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Reyes, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, and *Tijam, JJ.,* concur.

Mendoza, J., on official leave.

Martires, J., on wellness leave.

EN BANC

[G.R. No. 159139. June 6, 2017]

INFORMATION TECHNOLOGY FOUNDATION OF THE PHILIPPINES, MA. CORAZON M. AKOL, MIGUEL UY, EDUARDO H. LOPEZ, AUGUSTO C. LAGMAN, REX C. DRILON, MIGUEL HILADO, LEY SALCEDO, and MANUEL ALCUAZ, JR., *petitioners, vs.* **COMMISSION ON ELECTIONS, COMELEC CHAIRMAN BENJAMIN ABALOS, SR., COMELEC BIDDING AND AWARDS COMMITTEE CHAIRMAN EDUARDO D. MEJOS AND MEMBERS GIDEON DE GUZMAN, JOSE F. BALBUENA, LAMBERTO P. LLAMAS, and BARTOLOME SINOCRUZ, JR.,** *respondents.*

[G.R. No. 174777. June 6, 2017]

AQUILINO Q. PIMENTEL, JR., SERGIO R. OSMEÑA III, PANFILO M. LACSON, ALFREDO S. LIM, JAMBY A.S. MADRIGAL, LUISA P. EJERCITO-ESTRADA, JINGGOY E. ESTRADA, RODOLFO G. BIAZON, and RICHARD J. GORDON, *petitioners, vs.* **MA. MERCEDITAS NAVARRO-GUTIERREZ, in her capacity as OMBUDSMAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; INVESTIGATIVE AND PROSECUTORIAL POWERS; CANNOT GENERALLY BE INTERVENED WITH BY THE SUPREME COURT.—** Our pronouncements in the June 13, 2006 Resolution are consistent with the Court's policy of non-interference with the Ombudsman's conduct of preliminary investigations, and to leave the Ombudsman sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. As a general rule, the Court does not intervene with the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service. This policy rests on the fundamental doctrine of separation of powers, which is one of the foundations of our republican government. The 1987 Constitution clothed the Ombudsman with authority to investigate offenses committed by public officers and employees. x x x The determination of probable cause—that is, one made for the purpose of filing an information in court—is essentially an executive function and not a judicial one. The State's self-preserving power to prosecute violators of its penal laws is a necessary component of the Executive's power and responsibility to faithfully execute the laws of the land.

2. **ID.; JUDICIAL DEPARTMENT; JUDICIAL POWER; VESTED WITH THE SUPREME COURT.—** [T]he

Constitution vests the Supreme Court with judicial power, defined under Section 1, Article VIII as "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." Conspicuously absent in the provision is the power of the judiciary to prosecute crimes— much less the broader power to execute laws from which it can be inferred. As early as 1932, we held that: "It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act."

3. **ID.; DOCTRINE OF SEPARATION OF POWERS; COURTS SHOULD BE CONFINED TO THE EXERCISE OF JUDICIAL POWER AND NOT TO ENCROACH UPON THE FUNCTIONS OF THE OTHER BRANCHES OF THE GOVERNMENT.—** Under our constitutional structure, courts of law have no right to directly decide matters over which full discretionary authority has been delegated to another office or branch of government. We confine ourselves to the exercise of judicial power and are careful not to encroach upon the functions of the other branches of the government. Lest it be forgotten, separation of powers is not merely a hollow doctrine in constitutional law; rather, it serves a very important purpose in our democratic republic government, that is, to prevent tyranny by prohibiting the concentration of the sovereign powers of state in one body. The power to prosecute and the power to adjudicate must remain separate; otherwise, as James Madison warned, "[the judge] might behave with all the violence of [an oppressor]."

4. **ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; INVESTIGATIVE AND PROSECUTORIAL POWERS; THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE MAY ONLY BE ASSAILED THROUGH THE EXTRAORDINARY REMEDY OF CERTIORARI ON THE GROUND OF**

GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION, WHEN PRESENT.— For cases cognizable by the Sandiganbayan, the function of determining probable cause primarily lies with the Office of the Ombudsman, which has the presumed expertise in the laws it is entrusted to enforce. x x x The Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion. Not every error in the proceedings or every erroneous conclusion of law or fact, however, constitutes grave abuse of discretion. It has been stated that the Ombudsman may err or even abuse the discretion lodged in her by law, but such error or abuse alone does not render her act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of another constitutional body, the petitioner must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making her determination and in arriving at the conclusion she reached. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.

5. **REMEDIAL LAW; ACTIONS; ACTIONABLE FRAUD; A RIGHT OF ACTION OCCASIONED BY FRAUD IS DEPENDENT ON THE LAW UPON WHICH THE ACTION IS BASED.—** [F]raud has no technical legal meaning in our laws. In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. While the generic concept of fraud is similar for

both civil and criminal cases, the term is descriptive rather than substantive. In its specific and substantive sense, a right of action occasioned by fraud is dependent on the law upon which the action is based. Based on its nature, actionable fraud may be civil or criminal.

6. ID.; ID.; ID.; CIVIL FRAUD AND CRIMINAL FRAUD, DISTINGUISHED.— There are two broad classes of actionable civil fraud in this jurisdiction. First is fraud that gives rise to an action for damages, generally in case of contravention of the normal fulfillment of obligations or as a tort under the human relations provisions of the Civil Code, as well as in specific instances mentioned by law. To be actionable, the fraudulent act must cause loss or injury to another. Second is fraud that creates a vice in the intent of one or more parties in juridical transactions, such as wills, marriages, and contracts, among others. With respect to the latter, fraud may render the contract defective in varying degrees: voidable, when consent is obtained through fraud; rescissible, when the contract ts undertaken in fraud of creditors; and "reformable," when by reason of fraud, the parties' true intention is not expressed in the instrument. Criminal fraud, on the other hand, may pertain to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the Revised Penal Code. As a means, fraud may be an essential element of the crime *(e.g., estafa* by means of false pretenses or fraudulent acts or through fraudulent means) or a generic aggravating circumstance. Meanwhile, the crimes classified as frauds under the penal code punish specific types of fraud: machinations in public auctions; monopolies and combinations in restraint of trade; importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys; subsisting and altering trade-mark, trade-names, or service marks; unfair competition, fraudulent registration of trade-mark, trade-name or service mark, fraudulent designation of origin, and false description; frauds against the public treasury and similar offenses; and frauds committed by public officers. As with other criminal offenses, liability for these punishable frauds depends on the concurrence of the essential elements of each type of crime.

APPEARANCES OF COUNSEL

Pastelero Law Office for petitioner Information Technology of the Philippines, *et al*.
Henry Ll. Yusingco, Jr. for petitioner in G.R. No. 174777.
Lazaro Law Firm for Megapacific eSolutions, Inc.

D E C I S I O N

JARDELEZA, *J*.:

In *Information Technology Foundation of the Philippines (Infotech) v. Commission on Elections (COMELEC)*,[1] we nullified the COMELEC's award to Mega Pacific Consortium of the procurement contract involving the automated counting machines (ACMs) for the 2004 national elections. We found that the COMELEC gravely abused its discretion when it awarded the contract to an entity which failed to establish itself as a proper consortium, and despite the ACMs' failure to meet certain technical requirements. This case presents the question of whether our conclusion in *Infotech* that the COMELEC committed grave abuse of discretion is tantamount to a finding of probable cause that the COMELEC officials violated penal laws, thereby making it the ministerial duty of the respondent Ombudsman to file the appropriate criminal complaints.

I

On January 13, 2004, we promulgated the Decision in *Infotech* declaring as null and void: (a) COMELEC Resolution No. 6074 which awarded the contract for Phase II of the Comprehensive Automated Electoral System to Mega Pacific Consortium (MPC); and (b) the procurement contract for ACMs executed between the COMELEC and Mega Pacific eSolutions, Inc. (MPEI).[2] We found that the COMELEC's failure to follow its own rules, policies, and guidelines in respect of the bidding process, and

---

[1] G.R. No. 159139, January 13, 2004, 419 SCRA 141.

[2] *Id*. at 204.

to adequately check and observe financial, technical and legal requirements constituted grave abuse of discretion. In particular, we found that the winning bidder, MPC, failed to include in its bid documents any joint venture or consortium agreement between MPEI, Election.com, Ltd., WeSolv Open Computing, Inc., SK C&C, ePLDT and Oracle System (Philippines), Inc. that would prove that MPC is a proper consortium. Thus, we concluded that there was no documentary basis for the COMELEC to determine that the alleged consotium really existed and was eligible and qualified to bid.[3] Furthermore, we found that the ACMs from MPC failed to meet the 99.9995% accuracy rating required in the COMELEC's own Request for Proposal (RFP). Based on a 27-point test conducted by the Department of Science and Technology (DOST), MPC failed in eight mostly software-related items—which result should have warranted the rejection of MPC's bid.[4] Finally, we also found that it was grave abuse for the COMELEC to evaluate the demo version of the software instead of the final version which would be run during the national elections. And because the final version was still to be developed when the ACM contract was awarded, the COMELEC practically permitted the winning bidder to change and alter the subject of the contract, particularly the software, thus effectively allowing a substantive amendment without public bidding.[5] As a result of the foregoing lapses of the COMELEC, we also directed the Ombudsman to determine the criminal liability, if any, of the public officials and private individuals involved in the nullified resolution and contract.[6]

As mandated by the *Infotech* Decision, the Ombudsman initiated a fact-finding investigation docketed as CPL-C-04-0060. On January 21, 2004, Senator Aquilino Pimentel, Jr. also filed criminal and administrative complaints against COMELEC

---

[3] *Id.* at 164-174, 219-220.

[4] *Id.* at 181-191.

[5] *Id.* at 199-202.

[6] *Id.* at 204.

Chairman Benjamin S. Abalos, Sr. and other COMELEC officials with the Ombudsman, docketed as OMB-C-C-04-0011-A and OMB-C-A-04-0015-A.[7] Kilosbayan Foundation and Bantay Katarungan Foundation later filed a related complaint with the Ombudsman against COMELEC officials and stockholders of MPEI on September 19, 2004, docketed as OMB-L-C-02-0922-J.[8] The Field Investigation Office (FIO) of the Ombudsman filed a supplemental complaint on October 6, 2004. These cases were later on consolidated by the Ombudsman.[9]

In the meantime, the petitioners in the *Infotech* case (docketed as G.R. No. 159139) filed a Manifestation and Motion[10] dated December 22, 2005, as well as a Supplemental Motion[11] dated January 20, 2006, alleging that the Ombudsman has yet to comply with our directive in the *Infotech* Decision. Thus, on February 14, 2006, we issued a Resolution[12] directing the Ombudsman to show cause why it should not be held in contempt for its failure to comply with the Court's directive. In compliance with the foregoing Resolution, the Ombudsman filed its Comment[13] contending that it should not be held in contempt of court because it has "long acted on the referral, or complied with this x x x Court's *directive*' in this case, to its full extent."[14] In a Resolution[15] dated March 28, 2006, we directed the Ombudsman, under pain of contempt, to submit quarterly reports to the Court starting June 30, 2006.[16]

---

[7] *Rollo* (G.R. No. 174777), p. 93.

[8] *Id*. at 95.

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

[10] *Rollo* (G.R. No. 159139), pp. 3779-3784.

[11] *Id*. at 3800-3807.

[12] *Id* at 3817-3820.

[13] *Id*. at 3827-3870.

[14] *Id*. at 3854.

[15] *Id*. at 3889-3896.

[16] *Id*. at 3895.

Consequently, the Ombudsman issued a Resolution[17] dated June 28, 2006 recommending: (a) the filing of an information with the Sandiganbayan against Eduardo Mejos, Gideon G. De Guzman, Jose P. Balbuena, Lamberto P. Llamas, Bartolome J. Sinocruz, Jr., Willy U. Yu, Bonnie Yu, Enrique Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernardo L. Fong, and Lauriano Barrios; (b) the dismissal of the complaint against Jose Tolentino, Jaime Paz, Zita Buena-Castillon, and Rolando Viloria; (c) the referral of the findings against COMELEC Commissioner Resureccion Z. Borra to the House of Representatives; (d) the dismissal of Eduardo Mejos, Gideon G. De Guzman, Jose P. Balbuena, Lamberto P. Llamas, and Bartolome J. Sinocruz, Jr. from service; and (e) the conduct of further fact-finding investigation by the Ombudsman.[18] The respondents in the Ombudsman cases filed a Motion for Reconsideration of the aforementioned Resolution on July 10, 2006.[19]

On July 13, 2006, the investigating panel of the Office of the Ombudsman reconvened to carry out further investigation and clarificatory hearings. They invited resource persons and witnesses to testify and present relevant documents and papers in order to determine criminal liability of the public and private respondents in the Ombudsman cases. In all, the investigating panel conducted a total of 12 public hearings between July 13, 2006 and August 23, 2006, interviewed 10 witnesses, and received no less than 198 documents.[20]

Following these public hearings, the Ombudsman issued a Supplemental Resolution[21] dated September 27, 2006 which reversed and set aside the June 28, 2006 Resolution, and dismissed the administrative and criminal complaints against

---

[17] *Rollo* (G.R. No. 174777), pp. 88-124.

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

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

[20] *Id.* at 37-46, 52-57.

[21] *Id.* at 33-87.

both public and private respondents for lack of probable cause. The Supplemental Resolution stated that the Investigating Panel "cannot find an iota of evidence to show that the acts of [the Bids and Awards Committee (BAC)] in allowing MPC to bid and its subsequent recommendation to award [the] Phase II Contract to MPC constitute manifest [] partiality, evident bad faith or gross inexcusable negligence" and that it cannot establish that any "unwarranted benefit, advantage or preference was extended to MPC or MP[E]I by [the] BAC in the exercise of its administrative function in the determination [of] MPC's eligibility and subsequent recommendation made to [the] COMELEC."[22] In sum, the Ombudsman opined that a finding of grave abuse of discretion in the *Infotech* case cannot be considered criminal in nature in the absence of evidence showing bad faith, malice or bribery in the bidding process.[23]

Aggrieved by the Ombudsman's reversal, the petitioners filed the present special civil action for *certiorari* docketed as G.R. No. 174777 seeking to nullify the Ombudsman's Supplemental Resolution and to cite the Ombudsman in contempt. On the other hand, petitioners in G.R. No. 159139 filed a Motion[24] dated October 17, 2006 praying for the Court to: (1) reject the Ombudsman's Supplemental Resolution as compliance with the Court's directive in the *Infotech* decision; and (2) order the Ombudsman to file an information with the Sandiganbayan against the COMELEC officials and other private individuals. On the same date, we resolved to consolidate the two cases.[25]

II

As a preliminary procedural matter, we observe that while the petition asks this Court to set aside the Supplemental Resolution, which dismissed both administrative and criminal complaints, it is clear from the allegations therein that what

---

[22] *Id.* at 69.

[23] *Id*. at 69-70.

[24] *Rollo* (G.R. No. 159139), pp. 4260-4306.

[25] *Rollo* (G.R. No. 174777), pp. 125-126.

petitioners are questioning is the criminal aspect of the assailed resolution, *i.e.*, the Ombudsman's finding that there is no probable cause to indict the respondents in the Ombudsman cases.[26] Movants in G.R. No. 159139 similarly question this conclusion by the Ombudsman and accordingly pray that the Ombudsman be directed to file an information with the Sandiganbayan against the responsible COMELEC officials and conspiring private individuals.[27]

In *Kuizon v. Desierto*[28] and *Mendoza-Arce v. Office of the Ombudsman*,[29] we held that this Court has jurisdiction over petitions for certiorari questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of *Dagan v. Office of the Ombudsman (Visayas)*[30] that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. The *Dagan* ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman—first enunciated in *Fabian v. Desierto*[31] —that is, all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a petition for *certiorari* under Rule 65, must be filed with the Court of Appeals.

Accordingly, we shall limit our resolution to the criminal aspect of the Ombudsman's Supplemental Resolution dated September 27, 2006.

III

The dispositive portion of the *Infotech* decision reads:

---

[26] *Id*. at 23.

[27] *Rollo* (G.R. No. 159139), pp. 4260-4300.

[28] G.R. No. 140619, March 9, 2001, 354 SCRA 158.

[29] G.R. No. 149148, April 5, 2002, 380 SCRA 325.

[30] G.R. No. 184083, November 19, 2013, 709 SCRA 681.

[31] G.R. No. 129742, September 16, 1998, 295 SCRA 470.

WHEREFORE, the Petition is GRANTED. The Court hereby declares NULL and VOID Comelec Resolution No. 6074 awarding the contract for Phase II of the AES to Mega Pacific Consortium (MPC). Also declared null and void is the subject Contract executed between Comelec and Mega Pacific eSolutions (MPEI). Comelec is further ORDERED to refrain from implementing any other contract or agreement entered into with regard to this project.

Let a copy of this Decision be furnished the Office of the Ombudsman which shall determine the criminal liability, *if any*, of the public officials (and conspiring private individuals, *if any*) involved in the subject Resolution and Contract. Let the Office of the Solicitor General also take measures to protect the government and vindicate public interest from the ill effects of the illegal disbursements of public funds made by reason of the void Resolution and Contract.[32] (Citation omitted, emphasis supplied.)

The Ombudsman maintains that it has the discretion to determine whether a criminal case, given the facts of the case and the applicable laws and jurisprudence, should be filed.[33] The respondents in G.R. No. 159139, the COMELEC and MPEI, support the Ombudsman's position. They point to the plain text of the dispositive portion, *i.e.*, the use of the phrase "if any," which clearly demonstrates the Court's intent for the Ombudsman to conduct its own investigation and render an independent assessment based on whatever evidence the Ombudsman gathers.[34]

Against this straightforward interpretation, the petitioners in G.R. No. 174777 and movants in G.R. No. 159139 insist that "[t]he Supreme Court in the *Infotech* case has already established that a crime has been committed and endorsed the case to the Ombudsman to determine the specific personalities who are 'probably guilty' thereof."[35] They allege that, by issuing

---

[32] *Supra* note 1 at 204.

[33] *Rollo* (G.R. No. 174777), pp. 812-813.

[34] *Id*. at 619-620, 657-658.

[35] *Id.* at 23.

the Supplemental Resolution, the Ombudsman reversed the findings of the Supreme Court.[36] Consequently, they argue that the Ombudsman should also be held in indirect contempt because she failed to comply with our directive in *Infotech*. We take their arguments in turn.

A

The Court is mindful that the directive in the *Infotech* Decision may have been susceptible to misinterpretation, particularly when taken in conjunction with the oftentimes strong language used in the body of the *ponencia*. However, such statements were made only to emphasize the critical role of the COMELEC in the electoral process and to sternly remind the COMELEC that it cannot afford to be lackadaisical in the implementation of the bidding laws and rules, particularly when what is involved is no less than the national elections. Thus, to allay any fear that we are arrogating unto ourselves the powers of the Ombudsman, we deemed it proper to clarify the nature of our directive in a Resolution[37] dated June 13, 2006, the relevant portion of which provides:

> The Court emphatically stresses that its directive to the OMB to render a report on a regular basis, pursuant to this Court's Decision promulgated on January 13, 2004, does **not in any way** impinge upon, much less rob it of its independence as provided under the Constitution. Nowhere in the questioned Resolutions did the Court demand the OMB to decide or make a specific determination—one way or the other—of the culpability of any of the parties. Our directive was for the OMB to report on its "final determination of *whether* a probable cause exists against *any* of the public officials (and conspiring private individuals, *if any*) x x x." Surely, these emphasized words indicate that the Court in no way intends to intrude upon the discretionary powers of the OMB. x x x[38] (Emphasis in the original.)

Our pronouncements in the June 13, 2006 Resolution are consistent with the Court's policy of non-interference with the

---

[36] *Id.* at 20-21, 544-545.

[37] *Rollo* (G.R. No. 159139), pp. 3947-3950.

[38] *Id.* at 3948.

Ombudsman's conduct of preliminary investigations, and to leave the Ombudsman sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause.[39] As a general rule, the Court does not intervene with the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service.[40] This policy rests on the fundamental doctrine of separation of powers, which is one of the foundations of our republican government.

The 1987 Constitution clothed the Ombudsman with authority to investigate offenses committed by public officers and employees.[41] In *Casing v. Ombudsman*,[42] we stated that:

> The Constitution and R.A. No. 6770 endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.[43]

The determination of probable cause—that is, one made for the purpose of filing an information in court—is essentially an executive function and not a judicial one. The State's self-preserving power to prosecute violators of its penal laws is a necessary component of the Executive's power and responsibility to faithfully execute the laws of the land.[44]

---

[39] *Agdeppa v. Ombudsman,* G.R. No. 146376, April 23, 2014, 723 SCRA 293, 330 citing *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 507.

[40] *Id*.

[41] CONSTITUTION, Art. XI, Sec. 13(1).

[42] *Casing v. Ombudsman, supra*.

[43] *Id*. at 507.

[44] *Elma v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 56.

On the other hand, the Constitution vests the Supreme Court with judicial power, defined under Section 1, Article VIII as "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." Conspicuously absent in the provision is the power of the judiciary to prosecute crimes—much less the broader power to execute laws from which it can be inferred. As early as 1932, we held that: "It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act."[45]

In view of the constitutional delineation of powers, we reject the petitioners' contention that we already made a determination in the *Infotech* case that a crime has been committed. We could not have made such determination without going beyond the limits of our judicial power and thereby unlawfully impinging the prerogative of the constitutionally created Office of the Ombudsman. In *Infotech*, we only exercised our mandate to determine whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC. Ultimately, we found that the COMELEC committed grave abuse of discretion when it: (a) awarded the project to MPC, an entity that did not participate in the bidding; (b) accepted and paid for MPEI's ACMs that failed the 99.9995% accuracy requirement stated in the COMELEC's own bidding rule, including the software's failure to detect previously downloaded precinct results and the ACMs' inability to print audit trails without loss of data; and (c) accepted and awarded the contract based on a mere demo version of the software. However, a finding of grave abuse of discretion is not necessarily

---

[45] *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600, 605 (1932).

indicative of probable cause. To determine the latter, the constitutive elements of the crime must first be considered.[46] In the exercise of our *certiorari* jurisdiction in Infotech, we only resolved whether the COMELEC acted in a capricious, whimsical, arbitrary or despotic manner.[47] We never decided whether the facts were sufficient to engender a well-founded belief that a crime has been committed and that the respondents were probably guilty thereof.[48]

Under our constitutional structure, courts of law have no right to directly decide matters over which full discretionary authority has been delegated to another office or branch of government.[49] We confine ourselves to the exercise of judicial power and are careful not to encroach upon the functions of the other branches of the government. Lest it be forgotten, separation of powers is not merely a hollow doctrine in constitutional law; rather, it serves a very important purpose in our democratic republic government, that is, to prevent tyranny by prohibiting the concentration of the sovereign powers of state in one body. The power to prosecute and the power to adjudicate must remain separate; otherwise, as James Madison warned, "[the judge] might behave with all the violence of [an oppressor]."[50]

B

Apart from constitutionally founded limitations, there are also practical reasons why the Court does not interfere with

---

[46] *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013, 705 SCRA 629, 638.

[47] See *Saldariega v. Panganiban*, G.R. No. 211933, April 15, 2015, 755 SCRA 627.

[48] See *Alberto v. Court of Appeals*, G.R. No. 182130, June 19, 2013, 699 SCRA 104, 130.

[49] *Metrobank v. Tobias III*, G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177.

[50] James Madison, *The Federalist Papers: No. 47*, available at http://avalon.law.yale.edu/18th_century/fed47.asp (last accessed on August 13, 2015).

the Ombudsman's determination of the existence or absence of probable cause. These reasons are briefly, but concisely, stated in *Galario v. Office of the Ombudsman (Mindanao)*:[51]

> It is not sound practice to depart from the policy of noninterference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. If it were otherwise, **this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it,** to determine if there is probable cause.
>
> > [T]he Court does not interfere with the Ombudsman's discretion in the finding of probable cause resulting in its investigations. **The Ombudsman's findings are essentially factual in nature, and the Supreme Court is NOT a trier of facts.**[52] (Citation omitted, emphasis supplied.)

In his separate opinion in *Roberts, Jr. v. Court of Appeals*,[53] Chief Justice Narvasa succinctly stated his objection to the idea of the Court making a determination of probable cause:

> In this special civil action, this Court is being asked to assume the function of a public prosecutor. It is being asked to determine whether probable cause exists as regards petitioners. More concretely, the Court is being asked to examine and assess such evidence as has thus far been submitted by the parties and, on the basis thereof, make a conclusion as to whether or not it suffices "to engender a well[-] founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."
>
> **It is a function that this Court should not be called upon to perform. It is a function that properly pertains to the public**

---

[51] G.R. No. 166797, July 10, 2007, 527 SCRA 190.

[52] *Id*. at 206.

[53] G.R. No. 113930, March 5, 1996, 254 SCRA 307.

prosecutor, one that, as far as crimes cognizable by a Regional Trial Court are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. It is moreover a function that in the established scheme of things, is supposed to be performed at the very genesis of, indeed, prefatorily to, the formal commencement of a criminal action. The proceedings before a public prosecutor, it may well be stressed, are essentially preliminary, prefatory, and cannot lead to a final, definite and authoritative adjudgment of the guilt or innocence of the persons charged with a felony or crime.[54] (Citations omitted, emphasis supplied.)

For cases cognizable by the Sandiganbayan, the function of determining probable cause primarily lies with the Office of the Ombudsman, which has the presumed expertise in the laws it is entrusted to enforce.

C

The Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion. Not every error in the proceedings or every erroneous conclusion of law or fact, however, constitutes grave abuse of discretion. It has been stated that the Ombudsman may err or even abuse the discretion lodged in her by law, but such error or abuse alone does not render her act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of another constitutional body, the petitioner must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making her determination and in arriving at the conclusion she reached.[55] For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and

---

[54] *Id*. at 349-350 (Narvasa, *C.J.*, Separate Opinion).

[55] *Agdeppa v. Ombudsman, supra* note 39 at 332-333.

gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[56]

In a special civil action for *certiorari*, the burden of proving that the public officer acted with grave abuse of discretion, in accordance with the definition and standards stated above, lies with the person filing the petition.[57] Here, the petitioners solely rely on the *Infotech* Decision to support their contention that the Ombudsman gravely abused her discretion when she issued the assailed Supplemental Resolution. They argue that the Ombudsman's decision to dismiss the criminal complaints is tantamount to a reversal of a final decision by the Supreme Court.

However, a close scrutiny of the Supplemental Resolution reveals that the Ombudsman did not reverse the Court's findings in the *Infotech* case. Preliminarily, we reiterate the rule that the Supreme Court is not a trier of facts. Hence, the findings made in *Infotech* were not exhaustive insofar as they only represent undisputed facts.[58] To recapitulate, these facts were: (a) MPC did not present any joint venture or consortium agreement between MPEI, Election.com, Ltd., WeSolv Open Computing, Inc., SK C&C, ePLDT, and Oracle System (Philippines), Inc. in any of its bid documents; (b) the ACMs provided by MPC failed in eight mostly software-related items out of the 27-point test conducted by the DOST; (c) the COMELEC only evaluated a demo version of the software instead of the final version to be run in the national elections; and (d) notwithstanding the foregoing deficiencies, the COMELEC still awarded the contract and made partial payments to MPC. From these facts, we concluded that the COMELEC disregarded its own bidding rules and procedure by entertaining the bid of an

---

[56] *Id*. at 331, citing *M.A. Jimenez Enterprises, Inc. v. Ombudsman*, G.R. No. 155307, June 6, 2011, 650 SCRA 381, 392-394.

[57] *Id*. at 332.

[58] See *Matuguina Integrated, Wood Products, Inc. v. Court of Appeals*, G.R. No. 98310, October 24, 1996, 263 SCRA 490.

entity with no legal personality and by tolerating deviations from financial, technical and legal requirements—all of which amounted to grave abuse of discretion. Nonetheless, we did not make any determination, preliminary or otherwise, that the COMELEC acted with evident bad faith, manifest partiality or gross inexcusable negligence, or that MPC received any unwarranted benefit or undue advantage. Instead, we directed the Ombudsman to conduct its own investigation. To reiterate, we could not have made such determination because the power to do so falls squarely within the constitutional authority of the Ombudsman.

In the Supplemental Resolution, the Ombudsman found that when the COMELEC-BAC allowed MPC to bid, the public officials considered the numerous documents[59] submitted by MPC to arrive at the conclusion, albeit erroneous, that MPC was eligible. The Ombudsman also found that the COMELEC had intended to test the final version of the software,[60] but this plan was overtaken by the filing and subsequent resolution of the *Infotech* case. With respect to the bid itself, the Ombudsman found that MPC's bid was the lowest and most responsive.[61] The Ombudsman based these findings on the 12 public hearings conducted between July 13, 2006 and August 23, 2006. In the course of those hearings, the investigating panel heard 10 witnesses, received counter-affidavits, and gathered voluminous documents. Based on its independent investigation, the Ombudsman did not find that all the essential elements of the crimes punished under Sections 3(e) and (g) of Republic Act No. 3019[62] are present. In particular, the Ombudsman was of the opinion that there was nothing to show "that the acts of BAC in allowing MPC to bid and its subsequent recommendation to award [the] Phase II Contract to MPC constitute manifest []

---

[59] *Rollo* (G.R. No. 174777), pp. 52-57.

[60] *Id*. at 61-66.

[61] *Id*. at 68, 77.

[62] Anti-Graft and Corrupt Practices Act (1960).

partiality, evident bad faith or gross inexcusable negligence"[63] and "[n]either was it established that an unwarranted benefit, advantage or preference was extended to MPC or MP[E]I by BAC in the exercise of its administrative function in the determination [of] MPC's eligibility and subsequent recommendation x x x to [the] COMELEC."[64] In the end, the Ombudsman concluded that the COMELEC made errors of judgment but did not necessarily violate the anti-graft law.

Based on the foregoing, we find that the action taken by the Ombudsman cannot be characterized as arbitrary, capricious, whimsical or despotic. The Ombudsman found no evidence to prove probable cause. Probable cause refers to facts and circumstances sufficient to engender a well-founded belief that a crime has been committed and that the respondents probably committed it.[65] It signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[66] To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present.[67] Here, the Ombudsman determined the non-existence of probable cause only after conducting numerous hearings, reviewing copious documents, and evaluating these against the constitutive elements of the crimes punished under the anti-graft law—it was not as if the decision to dismiss the complaints was pulled out of thin air. The issuance of the Supplemental Resolution is clearly a valid exercise of the Ombudsman's discretion.

---

[63] *Rollo* (G.R. No. 174777), p. 69.

[64] *Id*.

[65] *Elma v. Jacobi, supra* note 44 at 57.

[66] *Tetangco v. Ombudsman*, G.R. No. 156427, January 20, 2006, 479 SCRA 249, 254.

[67] *Aguilar v. Department of Justice, supra* note 46 at 131.

The problem for the petitioners is that they relied solely on the *Infotech* Decision and did not actively participate in the investigation conducted by the Ombudsman. They did not submit any evidence to substantiate any claim of malice, bad faith, or bribery. In this regard, it bears emphasis that the petitioners do not ascribe grave abuse with regard to the conduct of the hearings. And they could not have; after all, they were duly notified by the Ombudsman and had every opportunity to participate in the preliminary investigation. Their misplaced reliance on *Infotech* now leaves them with nothing to anchor their petition on.

IV

We are not unaware of our Decision dated June 27, 2016 in *Republic v. Mega Pacific eSolutions, Inc.*,[68] where the Court's First Division relied on the same *Infotech* case to establish that MPEI committed fraud against the Republic which entitled the latter to a writ of preliminary attachment. To dispel any misconception, we deem it proper to clarify that our holding in *Republic*, much like in *Infotech*, was never intended to intrude into the Ombudsman's constitutional authority to determine probable cause.

To give a brief background, *Republic* involved an action for damages filed by MPEI with the Regional Trial Court of Makati City. MPEI claimed that notwithstanding the nullification of the contract, the COMELEC was still obligated to pay the amount of ₱200,165,681.89 representing the unpaid value of the ACMs and the support services delivered. COMELEC filed a counterclaim for the return of the payments made pursuant to the automation contract with a prayer for the issuance of a writ of preliminary attachment. The application for preliminary attachment was grounded upon the alleged fraudulent misrepresentation of MPEI and its incorporators as to the former's eligibility to participate in the bidding for the COMELEC automation project and the failure of the ACMs to comply with

---

[68] G.R. No. 184666, June 27, 2016.

mandatory technical requirements. The Court's First Division ruled in favor of the Republic and held that a writ of preliminary attachment should issue against the properties of therein respondents MPEI, Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernard I. Fong, and Lauriano A. Barrios. Relying on portions of the *Infotech* case, the Court ruled that: (1) "MPEI committed fraud by securing the election automation contract[] and x x x by misrepresenting that the actual bidder was MPC and not MPEI, which was only acting on behalf of MPC"; [69] (2) "MPEI has defrauded petitioner, since the former still executed the automation contract despite knowing that it was not qualified to bid for the same"; [70] and (3) "[d]espite its failure to meet the mandatory requirements set forth in the bidding procedure, [MPEI] still acceded to being awarded the contract."[71]

At the outset, it must be clarified that fraud has no technical legal meaning in our laws.[72] In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.[73] While the generic concept of fraud is similar for both civil and criminal cases, the term is descriptive rather than substantive. In its specific

---

[69] *Id*.

[70] *Id*.

[71] *Id*.

[72] *Carandang v. Santiago*, 97 Phil. 94 (1955).

[73] *Republic v. Mega Pacific eSolutions, Inc., supra* note 68 citing *People v. Menil, Jr.,* G.R. Nos. 115054-66, September 12, 2000, 340 SCRA 125.

and substantive sense, a right of action occasioned by fraud is dependent on the law upon which the action is based. Based on its nature, actionable fraud may be civil or criminal.

There are two broad classes of actionable civil fraud in this jurisdiction. First is fraud that gives rise to an action for damages, generally in case of contravention of the normal fulfillment of obligations[74] or as a tort under the human relations provisions of the Civil Code,[75] as well as in specific instances mentioned by law.[76] To be actionable, the fraudulent act must cause loss or injury to another. Second is fraud that creates a vice in the intent of one or more parties in juridical transactions, such as wills,[77] marriages,[78] and contracts, among others. With respect to the latter, fraud may render the contract defective in varying degrees: voidable, when consent is obtained through fraud;[79]

---

[74] CIVIL CODE, Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Art. 1171. Responsibility arising from fraud is demandable in all obligations. x x x

[75] CIVIL CODE. Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

x x x x x x x x x

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation. deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

x x x x x x x x x

Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

[76] For property relations, see CIVIL CODE, Arts. 500, 552 & 573; for partnership and agency, see CIVIL CODE, Arts. 1838 & 1909; for breach of contract, see CIVIL CODE, Art. 2220.

[77] CIVIL CODE, Art. 839.

[78] FAMILY CODE, Art. 45.

[79] CIVIL CODE, Arts. 1330 & 1390(2).

rescissible, when the contract ts undertaken in fraud of creditors;[80] and "reformable," when by reason of fraud, the parties' true intention is not expressed in the instrument.[81]

Criminal fraud, on the other hand, may pertain to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the Revised Penal Code. As a means, fraud may be an essential element of the crime (*e.g., estafa* by means of false pretenses or fraudulent acts or through fraudulent means[82]) or a generic aggravating circumstance.[83] Meanwhile, the crimes classified as frauds under the penal code punish specific types of fraud: machinations in public auctions;[84] monopolies and combinations in restraint of trade;[85] importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys;[86] subsisting and altering trade-mark, trade-names, or service marks;[87] unfair competition, fraudulent registration of trade-mark, trade-name or service mark, fraudulent designation of origin, and false description;[88] frauds against the public treasury and similar offenses;[89] and frauds committed by public officers.[90] As with other criminal offenses, liability for these punishable frauds depends on the concurrence of the essential elements of each type of crime.

---

[80] CIVIL CODE, Art. 1381 (3).

[81] CIVIL CODE, Art. 1359.

[82] REVISED PENAL CODE, Art. 315.

[83] REVISED PENAL CODE, Art. 14.

[84] REVISED PENAL CODE, Art. 185.

[85] REVISED PENAL CODE, Art. 186.

[86] REVISED PENAL CODE, Art. 187.

[87] REVISED PENAL CODE, Art. 188.

[88] REVISED PENAL CODE, Art. 189.

[89] REVISED PENAL CODE, Art. 213.

[90] REVISED PENAL CODE, Art. 214 in relation to Arts. 315-318.

It is immediately apparent that *Republic* involved a civil case, whereas the present case, although in the nature of a special civil action, originated from the preliminary investigation of a criminal case. We recognized this distinction in *Republic* itself:

> The main issue in the instant case is whether respondents are guilty of fraud in obtaining and executing the automation contract, to justify the issuance of a writ of preliminary attachment in petitioner's favor. Meanwhile, the issue relating to the proceedings before the Ombudsman (and this Court in G.R. No. 174777) pertains to the finding of lack of probable cause for the possible criminal liability of respondents under the Anti-Graft and Corrupt Practices Act.
>
> The matter before Us involves petitioner's application for a writ of preliminary attachment in relation to its recovery of the expended amount under the voided contract, and not the determination of whether there is probable cause to hold respondents liable for possible criminal liability due to the nullification of the automation contract. Whether or not the Ombudsman has found probable cause for possible criminal liability on the part of respondents is not controlling in the instant case.[91]

The distinction is a significant one in view of the legal nuances between civil fraud and criminal fraud. To recall, *Republic* originated from the government's application for a writ of preliminary attachment in a civil case pending before the trial court. Under Rule 57 of the Rules of Civil Procedure, one of the grounds for the issuance of a writ of preliminary attachment is when the party against whom attachment is sought is guilty of fraud in "contracting the debt or incurring the obligation upon which the action is brought."[92] The type of fraud referred to by this rule is civil in nature; in the law of contracts, it is commonly referred to as *dolo causante* or causal fraud, or those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract.[93] The finding of fraud in *Republic*,

---

[91] *Supra* note 68.

[92] RULES OF COURT, Rule 57, Sec. 1, par. (d).

[93] *Geraldez v. Court of Appeals*, G.R. No. 108253. February 23, 1994, 230 SCRA 320.

inasmuch as it involved fraud committed by MPEI in the execution of the procurement contract with COMELEC, pertains to causal fraud, which falls under the broad classification of civil fraud rather than criminal fraud. The issue of criminal fraud was not considered in *Republic* and no determination about the commission of any particular crime was made.

While we are not saying that the same act which constitutes civil fraud cannot serve as basis for criminal fraud and *vice versa*, the essential elements that create civil liability and those that give rise to criminal liability are neither identical nor legally interchangeable. We therefore find no conflict between our ruling in *Republic* and the Ombudsman's findings below.[94] We reiterate that it is not our function to determine at the first instance whether criminal fraud has been committed. That task properly lies with the prosecutorial arm of government, either with the Department of Justice or, as in this case, the Ombudsman.

V

Having ruled that the Ombudsman did not commit grave abuse of discretion, it is no longer necessary to belabor the issue on contempt. Suffice it to say that our directive to the Ombudsman was simply to determine if there was any criminal liability on the part of the public and private respondents in G.R. No. 159139. The Ombudsman sufficiently complied with this directive when she found that, based on the hearings conducted and documents gathered, probable cause did not exist.

* * *   * * *   * * *

The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers, except when there is grave abuse of discretion. The Ombudsman's determination of probable cause may only be assailed before this Court through the

---

[94] On this point, there was no finding in *Republic* that the COMELEC officials were involved in the civil fraud employed by MPEI in relation to the execution of the procurement contract.

extraordinary remedy of *certiorari.* The requirement for judicial intrusion, however, is still for the petitioners to demonstrate clearly that the Ombudsman acted arbitrarily or despotically. Absent such clear demonstration, the intervention must be disallowed in deference to the doctrine of non-interference.

WHEREFORE, the petition docketed as G.R. No. 174777 is **DISMISSED.** The Motion dated October 17, 2006 filed by the petitioners in G.R. No. 159139 is **DENIED.**

SO ORDERED.

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

Mendoza and *Martires, JJ.*, on official leave.

EN BANC

[G.R. No. 211093. June 6, 2017]

MINDANAO SHOPPING DESTINATION CORPORATION, ACE HARDWARE PHILS., INC., INTERNATIONAL TOYWORLD, INC., STAR APPLIANCE CENTER, INC., SURPLUS MARKETING CORPORATION, WATSONS PERSONAL CARE STORES (PHILS.), INC., and SUPERVALUE, INC., *petitioners, vs.* **HON. RODRIGO R. DUTERTE, in his capacity as Mayor of Davao City, HON. SARA DUTERTE, Vice-Mayor of Davao City, in her capacity as Presiding Officer of the Sangguniang Panlungsod, and THE SANGGUNIANG PANLUNGSOD (CITY COUNCIL) NG DAVAO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION AND FISCAL MATTERS; AUTHORITY OF LOCAL GOVERNMENT UNITS TO ADJUST RATES OF TAX ORDINANCES; REQUIREMENTS.—** Section 191 of the LGC presupposes that the following requirements are present for it to apply, to wit: (i) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (ii) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance. In the instant case, both elements are not present. As to the first requirement, it cannot be said that the old tax ordinance (first ordinance) was imposed in accordance with the provisions of the LGC. To reiterate, the old tax ordinance of Davao City was enacted before the LGC came into law. Thus, the assailed new ordinance, Davao City Ordinance No. 158-05, Series of 2005 was actually the first to impose the tax on retailers in accordance with the provisions of the LGC. As to the second requirement, the new tax ordinance (second ordinance) imposed the new tax base and the new tax rate as provided by the LGC for retailers. It must be emphasized that a tax has two components, a tax base and a tax rate. However, Section 191 contemplates a situation where there is already an existing tax as authorized under the LGC and only a change in the tax rate would be effected. Again, the new ordinance Davao City provided, not only a tax rate, but also a tax base that were appropriate for retailers, following the parameters provided under the LGC. Suffice it to say, the second requirement is absent. Thus, given the absence of the above two requirements for the application of Section 191 of the LGC, there is no reason for the latter to cover a situation where the ordinance, as in this case, was an initial implementation of R.A. 7160.

2. **ID.; ID.; ID.; ID.; ID.; INAPPLICABLE WHEN THE ADJUSTMENT IS NOT BY VIRTUE OF A UNILATERAL INCREASE OF THE TAX RATE.—** Section 191 of the LGC will not apply because with the assailed tax ordinance, there is no outright or unilateral increase of tax to speak of. The resulting increase in the tax rate for retailers was merely incidental. When Davao City enacted the assailed ordinance, it merely intended

to rectify the glaring error in the classification of wholesaler and retailer in the old ordinance. Petitioners are retailers as contemplated by the LGC. Petitioners never disputed their classification as retailers. Thus, being retailers, they are subject to the tax rate provided under Section 69 (d) and not under Section 69 (b) of the assailed ordinance. In effect, under the assailed ordinance as amended, petitioners as retailers are now assessed at the tax rate of one and one-fourth (1 ¼%) percent on their gross sales and not the fifty-five (55%) percent of one (1%) percent on their gross sales since the latter tax rate is only applicable to wholesalers, distributors, or dealers. The assailed ordinance merely imposes and collects the proper and legal tax due to the local government pursuant to the LGC. While it may appear that there was indeed a significant adjustment on the tax rate of retailers which affected the petitioners, it must, however, be emphasized that the adjustment was not by virtue of a unilateral increase of the tax rate of petitioners as retailers, but again, merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the provisions of the LGC.

3. **ID.; ID.; ID.; ID.; ID.; THE LIMITATION UNDER SECTION 191 OF THE CODE IS PROVIDED TO GUARD AGAINST POSSIBLE ABUSE OF THE LOCAL GOVERNMENT UNIT'S POWER TO TAX.—** [T]he limitation under Section 191 of the LGC was provided to guard against possible abuse of the LGU's power to tax. In this case, however, strictly speaking, the new tax rate for petitioners as retailers under the assailed ordinance is not a case where there was an imposition of a new tax rate, rather there is merely a rectification of an erroneous classification of taxpayers and tax rates, *i.e.*, of grouping retailers and wholesalers in one category, and their corresponding rates. The amendment of the old tax ordinance was not intended to abuse the LGU's taxing powers but merely sought to impose the rates as provided under the LGC as in fact the tax rate imposed was even lower than the rate authorized by the LGC. In effect, the assailed ordinance merely corrected the old ordinance so that it will be in accord with the LGC. To rule otherwise is tantamount to pronouncing that Davao City can no longer correct the apparent error in classifying wholesaler and retailer in the same category under its old tax ordinance.

Such proposition runs counter to the well-entrenched principle that *estoppel* does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.

4. **ID.; ID.; ID.; ID.; TAX ON BUSINESS; FOR THE INITIAL IMPLEMENTATION OF THE CODE, THE IMPOSITION OF THE TAX RATES AS PROVIDED IN SECTION 143 THEREOF IS FAIR AND REASONABLE; CASE AT BAR.—** [W]hile Davao City may rectify and amend their old tax ordinance in order to give full implementation of the LGC, it, however, cannot impose a straight 1.25% at its initial implementation of the LGC in so far as retailers are concerned. Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. While Davao City cannot be faulted in failing to immediately implement the LGC, petitioners cannot likewise be unjustly prejudiced by its initial implementation of the LGC. It is but fair and reasonable that Davao City at its initial implementation of the LGC, impose the tax rates as provided in Section 143. It is only then that the imposition of the tax rate on retailers will not be considered as confiscatory or oppressive, considering that the reclassification of wholesaler and retailer and their corresponding tax rate being observed now is in accord with the LGC.

5. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAW; VALID AND REASONABLE CLASSIFICATION; REQUIREMENTS.—** [A]n ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class.

6. **ID.; POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER TO TAX; THE INIQUITIES WHICH RESULT FROM A SINGLING OUT OF ONE PARTICULAR CLASS OF TAXATION OR EXEMPTION INFRINGE NO**

CONSTITUTIONAL LIMITATION, FOR A STATE IS FREE TO SELECT THE SUBJECT OF TAXATION.— For the purpose of rectifying the erroneous classification of wholesaler and retailer in the old ordinance in order to conform to the classification and the tax rates as imposed by the LGC is neither invalid nor unreasonable. The differentiation of wholesaler and retailer conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution. It is inherent in the power to tax that a State is free to select the subjects of taxation. Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.

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

1. **POLITICAL LAW; LOCAL GOVERNMENT; POWER OF LOCAL GOVERNMENT UNITS TO TAX; SUBJECT TO THE STATUTORY GUIDELINES PROVIDED BY CONGRESS.—** To strengthen local autonomy and decentralization and to lessen dependence on the national government, Article X, Section 5 of the Constitution grants local government units the power to create their own sources of revenue. The Local Government Code is an innovative piece of legislation designed to give life to the basic policy of local autonomy. In the field of taxation, local government units are given enough flexibility to widen their tax base and impose tax rates depending on their respective needs. However, the power of local government units to tax is not absolute. Rather, it is subject to the statutory guidelines provided by Congress. The Local Government Code was enacted not just to amplify the power of local governments to create their own sources of revenue but also to ensure that taxpayers will not be "overburdened or saddled with multiple and unreasonable impositions." Thus, the imposition of taxes by local government units is subject to the following common limitations under Sections 130, 132, 133, and 186 of the Local Government Code.
2. **ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION AND FISCAL MATTERS; TAX ON BUSINESS; THE IMPOSITION OF THE SAME TAX RATE ON WHOLESALERS AND RETAILERS IS NOT PROHIBITED, FOR WHAT IS PROSCRIBED IS THE**

IMPOSITION OF A TAX RATE GREATER THAN THAT PROVIDED BY LAW.— The wholesale and retail businesses were categorized differently in Davao's old tax code. Wholesalers were taxed under Section 1(b) while retailers were taxed under Section 1(d). Despite this distinction, retailers were deliberately taxed in the same manner and at the same rate as wholesalers under Davao's old tax code x x x. The Local Government Code does not prohibit the imposition of the same tax rate on wholesalers and retailers. What is proscribed is the imposition of a tax rate greater than that provided by law. Pursuant to Section 151 in relation to Section 143(d) of the Local Government Code, a city may impose a maximum tax rate of 1.5% on retailers with gross sales or receipts of more than ₱400,000.00. Thus, Davao City may increase the tax rate imposed on retailers from the old rate of 50% of 1% or 0.5% to 1.5%.

3. **ID.; ID.; ID.; ID.; AUTHORITY OF LOCAL GOVERNMENT UNITS TO ADJUST RATES OF TAX ORDINANCES; LIMITATIONS.—** Although local government units may adjust their tax rates, there are two (2) limitations to this power. The first limitation refers to the frequency by which local government units may adjust their tax rates. The second limitation pertains to the amount of each adjustment. x x x Should local government units decide to adjust their tax rates, Section 191 of the Local Government Code limits the amount of each adjustment and the frequency by which this authority may be exercised. Local government units can only adjust tax rates once every five (5) years. Moreover, the amount of adjustment should not exceed ten percent (10%) of the rates fixed under the Local Government Code.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioners.

Melchor V. Quitain, Osmundo P. Villanueva, Jr., and *Enrique J.A. Bonocan* for respondents.

DECISION

PERALTA, *J*.:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking the reversal of the Decision[2] dated August 29, 2013 and Resolution[3] dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482, which affirmed the Decision dated July 2, 2007 and Resolution dated October 31, 2007 of the Office of the President.

Petitioners Mindanao Shopping Destination Corporation, Ace Hardware Philippines, Inc., International Toyworld, Inc., Star Appliance Center, Inc., Surplus Marketing Corporation, Watsons Personal Care Stores (Philippines), Inc. and Supervalue, Inc. (collectively as petitioners) are corporations duly organized and existing under and by virtue of Philippine law and engaged in the retail business of selling general merchandise within the territorial jurisdiction of Davao City.[4]

The facts are as follows:

On November 16, 2005, respondent *Sangguniang Panglungsod* of Davao City (*Sanggunian*), after due notice and hearing, enacted the assailed Davao City Ordinance No. 158-05, Series of 2005, otherwise known as "*An Ordinance Approving the 2005 Revenue Code of the City of Davao, as Amended*"[5] attested to by Vice-Mayor Hon. Luis B. Bonguyan (respondent Vice-Mayor), as Presiding Officer of the *Sanggunian*, and approved by then City Mayor, Hon. Rodrigo R. Duterte, now the President of the Republic of the Philippines. The Ordinance took effect after

---

[1] *Rollo* pp. 3-33.

[2] Penned by Court of Appeals Associate Justice Victoria Isabel A. Paredes, with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez, concurring, *id*. at 45-61.

[3] *Rollo*, pp. 62-63.

[4] *Id.* at 9.

[5] *Id.* at 104.

the publication in the *Mindanao Mercury Times*, a newspaper of general circulation in Davao City, for three (3) consecutive days, December 23, 24 and 25, 2005.[6]

Petitioners' particular concern is Section 69 (d)[7] of the questioned Ordinance which provides:

> Section 69. *Imposition of Tax*. There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts prescribed:
>
> x x x x x x x x x
>
> (d) On Retailers

Gross Sales/Receipts for the Preceding Year	Rates of Tax Per Annum
More than ₱50,000 but not over ₱400,000.00	2%
In excess of ₱400,000.00	1 ½ %

> However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar year does not exceed Fifty Thousand Pesos (₱50,000) subject to existing laws and regulations.
>
> x x x x x x x x x

Petitioners claimed that they used to pay only 50% of 1% of the business tax rate under the old Davao City Ordinance No. 230, Series of 1990, but in the assailed new ordinance, it will require them to pay a tax rate of 1.5%, or an increase of 200% from the previous rate. Petitioners believe that the increase is not allowed under Republic Act (*RA*) No. 7160, *The Local Government Code* (*LGC*). Consequently, invoking the LGC, petitioners appealed to the DOJ, docketed as MTO-DOJ Case No. 02-2006, asserting the unconstitutionality and illegality of Section 69 (d), for being unjust, excessive, oppressive,

---

[6] *Id*.

[7] *Id*. at 71.

confiscatory and contrary to the 1987 Constitution and the provisions of the LGC. Petitioners prayed that the questioned ordinance, particularly Section 69 (d) thereof be declared as null and void *ab initio*.

For lack of material time, the appeal was filed and served through registered mail. Unfortunately, when the appeal was mailed on January 24, 2006, the verification/certification of non-forum shopping and the postal money order, covering the payment of filing fees were not attached. The attachments were mailed the next day, January 25, 2006, together with a covering manifestation. Petitioners received respondents' Comment on the appeal on March 2, 2006; and, on June 27, 2006, petitioners received respondents' manifestation alleging that the appeal should be deemed filed out of time for failure to pay the filing fees within the prescribed period.

In a Resolution[8] dated July 12, 2006, the DOJ-OSec dismissed the appeal and denied petitioners' motion for reconsideration.[9]

Meanwhile, on September 26, 2006, Davao City Ordinance No. 0253, Series of 2006 (*Amended Ordinance*), amended Section 69 (d) of the questioned ordinance. In it, tax rate on retailers with gross receipts in excess of ₱400,000.00 was reduced from one and one-half percent (1½%) to one and one-fourth percent (1¼%); Section 69 (d), as amended, now reads:

(d) On Retailers

Gross Sales/Receipts for the Preceding Year	Rates of Tax Per Annum
More than ₱50,000 but not over ₱400,000.00	2%
In excess of ₱400,000.00	1 ¼ %

However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar

[8] *Id*. at 150-156.

[9] *Id*. at 181-183.

year does not exceed Fifty Thousand Pesos (₱50,000) subject to existing laws and regulations.

With the above development, respondents maintained that the adjustment in the tax base no longer exceeds the limitation as set forth in Section 191 of the LGC considering that the current Davao City tax rate of 1.25% on retailers with gross receipts/sales of over ₱400,000.00 under the assailed ordinance is way below or 0.25% short of the maximum tax rates of 1.5% for cities sanctioned by the LGC. Respondents insist that there is thus no increase or adjustment to speak of under the premises which is violative of Section 191 of the LGC.

From the dismissal of the appeal and the denial of their motion for reconsideration, petitioners filed an appeal before the Office of the President (*OP*). On July 2, 2007, the OP, finding no merit on petitioners' appeal, dismissed the latter.[10] Petitioners moved for reconsideration, but was denied anew in a Resolution[11] dated October 31, 2007.

Unperturbed, petitioners filed a petition for review before the Court of Appeals.[12]

On August 29, 2013, in the disputed Decision of the appellate court, the latter dismissed the petition, to wit:

> **WHEREFORE**, the Petition is **DISMISSED**. The Decision dated July 2, 2007 and the Resolution dated October 31, 2007 of the Office of the President in O.P. Case no. 06-L-425 are **AFFIRMED**.
>
> **SO ORDERED.**[13]

Petitioners moved for reconsideration, but were denied in a Resolution[14] dated January 22, 2014. Thus, the instant petition

---

[10] *Id.* at 461-463.

[11] *Id*. at 477-478.

[12] *Id*. at 500-537.

[13] *Id*. at 60. (Emphasis in the original)

[14] *Id*. at 62-63.

for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS DESPITE THE PATENT ILLEGALITY AND UNCONSTITUTIONALITY, UPHELD THE VALIDITY OF THE ORDINANCE AS WELL AS THE LOCAL SANGGUNIAN'S ARBITRARY EXERCISE OF ITS POWER TO TAX

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT ADDRESSING THE MAIN ISSUE RAISED BY PETITIONERS AS A CONSTITUTIONAL ISSUE.

WHETHER THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE SUBSTANTIAL COMPLIANCE OVER PROCEDURAL DEFICIENCIES

On the procedural issues, We find that at this stage of the proceeding, it is futile to belabor on the procedural deficiencies since the issue of timeliness of the appeal has become moot and academic considering that petitioners' appeal was given due course by the OP. In fact, both the OP and the appellate court decided the appeal on the merits and not merely on technicality. We will, thus, proceed with the substantive issues of the instant case.

Petitioners assert that although the maximum rate that may be imposed by cities on retailers with gross receipts exceeding ₱400,000.00 is 1.5% of the gross receipts, *the maximum adjustment which can be applied once every five (5) years, is only 0.15% or 10% of the maximum rate of 1.5% of the gross receipts in accordance with Section 191 of the LGC.* However, petitioners lamented that the assailed Ordinance increased the tax rate on them, as retailers, by more than the maximum allowable rate of 0.15%, from *50% of 1% (0.5%) of the gross receipts* to *1.5% (now, 1.25%) of the gross receipts,* thus, violating Section 191 in relation to Sections 143 and 151 of the Code.

A perusal of the assailed new ordinance, particularly Section 69 (a) and (b) of Davao City Ordinance No. 158-05, Series of 2005, provides:

Section 69. *Imposition of Tax*. — There is hereby imposed on the following persons who establish, operates, conduct or maintain their respective business within the city a graduated tax in the amounts hereafter prescribed:

x x x x x x x x x

(b) On **WHOLESALERS, DISTRIBUTORS, OR DEALERS,** in any article of commerce of whatever kind or nature in accordance with the following schedules:

Gross Sales/Receipts for the Preceding Calendar Year	Amount of Tax per Annum
x x x x x x	x x x
In excess ₱2,000,00.00	**At a rate of fifty-five (55%) percent of one percent (1%)**
x x x x x x	x x x

(d) On RETAILERS:

Gross Sales/Receipts for the Preceding Calendar Year	Rate of Tax Per Annum
More than ₱50,000.00 but not over ₱400,000.00	2%
In excess of ₱400,000.00	**1 1/2%**
x x x x x x	x x x[15]

Petitioners claim that the assailed tax ordinance is violative of the Local Government Code, specifically Section 191, in relation to Sections 143 and 151, to wit:

Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances*. — **Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.**

Section 143 (d). *Tax on Business*. —The municipality may impose taxes on the following businesses:

---

[15] Emphasis ours.

x x x x x x x x x

(d) On retailers

With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum
₱400,000.00 or less	2.00%
More than ₱400,000.00	1.00%

x x x x x x x x x

Section 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.[16]

We disagree.

Under the old tax ordinance of Davao City, *Ordinance No. 230, Series of 1990*, wholesalers and retailers were grouped as one, thus, the tax base and tax rate imposed upon retailers were the same as that imposed upon wholesalers. Subsequently, with the implementation of Republic Act No. 7160, otherwise known as the Local Government Code of the Philippines, the latter authorized a difference in the tax treatment between wholesale and retail businesses. Where before under the old tax ordinance, Davao City retailers only paid ½ of 1% of the gross sales/receipts exceeding ₱2,000,000.00, now under the new tax ordinance, retailers would have to pay 1.25% of the gross sales/receipts exceeding ₱400,000.00.

---

[16] Emphasis ours.

However, it must be emphasized that the assailed new tax ordinance is actually the initial implementation by the Davao City local government of the tax provisions of R.A 7160 (LGC) considering that the old tax ordinance of Davao City was enacted in 1990, or prior to the effectivity of the LGC on January 1, 1992. It then would explain why the old tax ordinance of Davao City lumped under one business tax and under the same set of tax rates these two business activities – *retail* and *wholesale*. There is no provision under Batas Pambansa Blg. 337,[17] the old LGC, which specifically define these business activities. Under Section 131 of R.A. 7160,[18] however, *wholesale* and *retail* are now defined, classified and taxed differently. It cannot be said then that Davao City, on its own, deliberately grouped these two business activities under one business tax. To reiterate, it is only with the implementation of R.A. 7160 that these two business activities, *i.e., wholesale* and *retail*, were specifically defined, classified in different categories, and, thus, taxed differently. Corollarily, it is only sound that by analogy, *wholesalers* and *retailers* should likewise be treated and classified differently to provide accuracy to the very meaning of its rootword and to give meaning to the intention of the law.

Thus, considering that *wholesale* and *retail* were defined and classified differently under the LGC, it is then logical that they are, likewise, given separate and distinct tax base. Article II, Sections 142 and 143 of the LGC provides:

---

[17] *An Act Enacting a Local Government Code; Approved: February 10, 1983.*

[18] Section 131. *Definition of Terms.* — When used in this Title, the term:

x x x x x x x x x

(w) "Retail" means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold;

x x x x x x x x x

(z) "Wholesale" means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.

ARTICLE I

Municipalities

Section 142. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.

Section 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:

x x x x x x x x x

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than ₱1,000.00	18
₱1,000.00 or more but less than 2,000.00	33.00
2,000.00 or more but less than 3,000.00	50.00
3,000.00 or more but less than 4,000.00	72.00
4,000.00 or more but less than 5,000.00	100.00
5,000.00 or more but less than 6,000.00	121.00
6,000.00 or more but less than 7,000.00	143.00
7,000.00 or more but less than 8,000.00	165.00
8,000.00 or more but less than 10,000.00	187.00
10,000.00 or more but less than 15,000.00	220.00

15,000.00 or more but less than 20,000.00	275.00
20,000.00 or more but less than 30,000.00	330.00
30,000.00 or more but less than 40,000.00	440.00
40,000.00 or more but less than 50,000.00	660.00
50,000.00 or more but less than 75,000.00	990.00
75,000.00 or more but less than 100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	1,870.00
150,000.00 or more but less than 200,000.00	2,420.00
200,000.00 or more but less than 300,000.00	3,300.00
300,000.00 or more but less than 500,000.00	4,400.00
500,000.00 or more but less than 750,000.00	6,600.00
750,000.00 or more but less than 1,000,000.00	8,800.00
1,000,000.00 or more but less than 2,000,000.00	10,000.00

2,000,000.00 or more at a rate not exceeding fifty percent (50%) of one percent (1%).

x x x x x x x x x

(d) On retailers.

With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum

₱400,000.00 or less	2%
more than ₱400,000.00	**1%**

Provided, however, That *barangays* shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.[19]

From the foregoing, it can be shown that the assailed ordinance does not violate the limitation imposed by Section 191 of the LGC on the adjustment of tax rate for the following reasons:

Firstly, Section 191 of the LGC presupposes that the following requirements are present for it to apply, to wit: (i) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (ii) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance. In the instant case, both elements are not present.

As to the first requirement, it cannot be said that the old tax ordinance (first ordinance) was imposed in accordance with the provisions of the LGC. To reiterate, the old tax ordinance of Davao City was enacted before the LGC came into law. Thus, the assailed new ordinance, Davao City Ordinance No. 158-05, Series of 2005 was actually the first to impose the tax on retailers in accordance with the provisions of the LGC.

As to the second requirement, the new tax ordinance (second ordinance) imposed the new tax base and the new tax rate as provided by the LGC for retailers. It must be emphasized that a tax has two components, a tax base and a tax rate. However, Section 191 contemplates a situation where there is already an existing tax as authorized under the LGC and only a change in the tax rate would be effected. Again, the new ordinance Davao City provided, not only a tax rate, but also a tax base that were appropriate for retailers, following the parameters provided under the LGC. Suffice it to say, the second requirement is absent.

---

[19] Emphasis ours.

Thus, given the absence of the above two requirements for the application of Section 191 of the LGC, there is no reason for the latter to cover a situation where the ordinance, as in this case, was an initial implementation of R.A. 7160.

Secondly, Section 191 of the LGC will not apply because with the assailed tax ordinance, there is no outright or unilateral increase of tax to speak of. The resulting increase in the tax rate for retailers was merely incidental. When Davao City enacted the assailed ordinance, it merely intended to rectify the glaring error in the classification of wholesaler and retailer in the old ordinance. Petitioners are retailers as contemplated by the LGC. Petitioners never disputed their classification as retailers.[20] Thus, being retailers, they are subject to the tax rate provided under Section 69 (d) and not under Section 69 (b) of the assailed ordinance. In effect, under the assailed ordinance as amended, petitioners as retailers are now assessed at the tax rate of one and one-fourth (1¼%) percent on their gross sales and not the fifty-five (55%) percent of one (1%) percent on their gross sales since the latter tax rate is only applicable to wholesalers, distributors, or dealers. The assailed ordinance merely imposes and collects the proper and legal tax due to the local government pursuant to the LGC. While it may appear that there was indeed a significant adjustment on the tax rate of retailers which affected the petitioners, it must, however, be emphasized that the adjustment was not by virtue of a unilateral increase of the tax rate of petitioners as retailers, but again, merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the provisions of the LGC.

Indeed, as correctly pointed out by the appellate court, Section 191 is a limitation upon the adjustment, specifically on the increase in the tax rates imposed by the local government units. We quote the appellate court's ruling with approval, to wit:

> x x x Section 191 has no bearing in the instant case because what actually took place in the questioned Ordinance was the correction

[20] *Rollo*, p. 7.

of an erroneous classification, and not, an upward adjustment or increase of tax rates. The fact that there occurred an increase in payment due to the reclassification is of no moment, because: (1) reclassification is not prohibited; (2) reclassification was made to effect a correction; and (3) the taxes imposed upon the reclassified taxpayers, was not amended or increased from that stated in the Local Government Code. And, it is worthwhile to mention that petitioners have not denied that they are engaged in the retail business, hence, the reclassification was right, proper and legal.[21]

Couched in similar conclusion is the ruling of the Office of the President where in the same manner it agreed that the adjustment in the tax rate of petitioners did not violate the provisions of the LGC and the Constitution. The pertinent portion of the decision reads, thus:

Secondly, the office *a quo* correctly ruled that the City Government of Davao merely reclassified taxpayers earlier treated as one class into separate classes thus subjecting them to different tax bases and tax rates such that "retailers" are no longer treated and taxed in the same way as "wholesalers" unlike in the old ordinance. Distinctly defined from each other, a different tax treatment for each class of taxpayer is reasonable. Such being the case, the maximum tax rate and tax base ceilings provided in Section 143, in relation to Section 151 of the Local Government Code, is not in point as the prohibition/ limitation refers to an adjustment or increase in the tax rate or tax base for the same class of taxpayer. As held in PLDT, Inc. vs. City of Davao (399 SCRA 442), "statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State."[22]

Thirdly, it must be pointed out that the limitation under Section 191 of the LGC was provided to guard against possible abuse of the LGU's power to tax.[23] In this case, however, strictly speaking, the new tax rate for petitioners as retailers under the

---

[21] *Id*. at 57-58.

[22] *Id*. at 462-463.

[23] Eric R. Recalde, *The Philippine Local Tax and Tariff & Customs Laws,* 163 (2011).

assailed ordinance is not a case where there was an imposition of a new tax rate, rather there is merely a rectification of an erroneous classification of taxpayers and tax rates, *i.e.*, of grouping retailers and wholesalers in one category, and their corresponding rates. The amendment of the old tax ordinance was not intended to abuse the LGU's taxing powers but merely sought to impose the rates as provided under the LGC as in fact the tax rate imposed was even lower than the rate authorized by the LGC. In effect, the assailed ordinance merely corrected the old ordinance so that it will be in accord with the LGC. To rule otherwise is tantamount to pronouncing that Davao City can no longer correct the apparent error in classifying wholesaler and retailer in the same category under its old tax ordinance. Such proposition runs counter to the well-entrenched principle that *estoppel* does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[24]

However, while Davao City may rectify and amend their old tax ordinance in order to give full implementation of the LGC, it, however, cannot impose a straight 1.25% at its initial implementation of the LGC in so far as retailers are concerned. Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. While Davao City cannot be faulted in failing to immediately implement the LGC, petitioners cannot likewise be unjustly prejudiced by its initial implementation of the LGC. It is but fair and reasonable that Davao City at its initial implementation of the LGC, impose the tax rates as provided in Section 143. It is only then that the imposition of the tax rate on retailers will not be considered as confiscatory or oppressive, considering that the reclassification of wholesaler and retailer and their corresponding tax rate being observed now is in accord with the LGC.

---

[24] *Commissioner of Internal Revenue v. Petron Corporation*, 685 Phil. 118, 147 (2012).

Furthermore, to clarify, the old ordinance because it remained unchanged until the new tax ordinance was enacted in 2005, charged lower tax rates for retailers which resulted in lower revenues of Davao City. Corollarily, while there was an increase in the amount of taxes to be paid by petitioners as retailers, it should not be overlooked that the retailer has, in fact, benefited already for a long time under the old tax ordinance because it paid lower taxes due to Davao City's failure to immediately implement the LGC. Davao City has already foregone a substantial loss in revenues as a result of an unadjusted lower tax rate for retailers. Thus, dictated by justice and fairness, in its initial attempt to implement the LGC, Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. Considering that 11 years had already elapsed from its implementing in 2006, Davao City could adjust its tax rate twice now which will make its adjusted tax rate for retailers pegged at 1.2%, in accordance with Section 191 of the LGC. To clarify, from 2006-2011 (first 5 years), the initial tax rate should start with 1%; from 2011-2016 (next 5 years) – 1.1%, thus, for the years 2017-2021, the tax adjustment is 1.21%. However, for this purpose, Davao City should pass an ordinance to give effect to the above-discussed tax adjustments.

Again, based on the foregoing, Davao City merely implemented the LGC, albeit it resulted in — an increase in retailer's tax liability — which nevertheless is not covered by Section 191 of the LGC. In any case, an ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. For the purpose of rectifying the erroneous classification of wholesaler and retailer in the old ordinance in order to conform to the classification and the tax rates as imposed by the LGC is neither invalid nor unreasonable. The differentiation of wholesaler and retailer conforms to the practical dictates of

justice and equity and is not discriminatory within the meaning of the Constitution. It is inherent in the power to tax that a State is free to select the subjects of taxation. Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.[25]

Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, petitioner has the burden to prove a clear and unequivocal breach of the Constitution, which petitioner miserably failed to do.[26]

In *Smart Communications, Inc. v. Municipality of Malvar, Batangas,*[27] citing *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management,*[28] the Court held, thus:

> To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated August 29, 2013 and the Resolution dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482 are hereby **AFFIRMED with**

---

[25] See *Ferrer, Jr. v. City Mayor of Quezon City, et al*., G.R. No. 210551, June 30, 2015, 760 SCRA 652, 710.

[26] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 686 Phil. 357, 372-373 (2012).

[27] 727 Phil. 430, 447 (2014).

[28] *Supra* note 26, at 373.

MODIFICATION in so far as the tax rate of 1.25% to be imposed on petitioners is **REDUCED** to 1.21%.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Reyes, Perlas-Bernabe, Jardeleza, Caguioa, and *Tijam, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Mendoza, J., on official leave.

Martires, J., on wellness leave.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

Respectfully, I disagree with the *ponencia's* conclusion that the tax rate imposed on retailers under Davao City Ordinance No. 253, Series of 2006 is "a rectification of an erroneous classification of taxpayers and tax rates"[1] under Davao's old tax code. The 1.25% tax levied on retailers is an imposition of a new tax. Wholesalers and retailers were not grouped into a single category under Davao's old tax code. They were classified separately, although taxed with the same rate.

However, I agree that Davao City, in its initial attempt to implement the tax rates under the Local Government Code of 1991 (Local Government Code), can impose the minimum tax rate of one percent (1%) on retailers reckoned from 2006 to 2011. I also agree that Davao City may adjust the tax rate on a staggered basis due to the lapse of a considerable length of time from the enactment of its new tax ordinance. Hence, the tax rate on retailers should be 1.1% from taxable years 2011 to 2016 and 1.21% for taxable years 2017 to 2021, in accordance with the limitation under Section 191 of the Local Government Code.

---

[1] *Ponencia*, p. 12.

Section 69(d) of Davao City Ordinance No. 253, Series of 2006, which immediately imposed a 1.25% tax rate on retailers, violates the Local Government Code in that it exceeds the allowable adjustment of tax rates. Any adjustment in the tax rates of local government units must conform to the limitations under Section 191 of the Local Government Code.[2]

To strengthen local autonomy and decentralization and to lessen dependence on the national government,[3] Article X, Section 5 of the Constitution grants local government units the power to create their own sources of revenue.[4]

The Local Government Code is an innovative piece of legislation[5] designed to give life to the basic policy of local autonomy. In the field of taxation, local government units are given enough flexibility to widen their tax base and impose tax rates depending on their respective needs.[6]

However, the power of local government units to tax is not absolute. Rather, it is subject to the statutory guidelines provided by Congress.[7] The Local Government Code was enacted not just to amplify the power of local governments to create their own

---

[2] LOCAL GOV. CODE, Sec. 191 provides:

Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances.* — Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

[3] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 248-249 (2003) [Per *J.* Puno, Third Division].

[4] CONST., Art. X, Sec. 5 provides:

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

[5] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 250 (2003) [Per *J.* Puno, Third Division].

[6] *Id.* at 250.

[7] CONST., Art. X, Sec. 5.

sources of revenue but also to ensure that taxpayers will not be "overburdened or saddled with multiple and unreasonable impositions."[8] Thus, the imposition of taxes by local government units is subject to the following common limitations under Sections 130,[9] 132,[10] 133,[11] and 186[12] of the Local Government Code.

---

[8] *Ferrer v. Bautista*, 760 Phil. 652, 698 (2015) [Per *J.* Peralta, *En Banc*], citing *Manila Electric Company v. Province of Laguna*, 366 Phil. 428 (1999) [Per *J.* Vitug, Third Division].

[9] LOCAL GOV. CODE, Sec. 130 provides:

Section 130. *Fundamental Principles*. — The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

(a) Taxation shall be uniform in each local government unit;

(b) Taxes, fees, charges and other impositions shall:

(1) be equitable and based as far as practicable on the taxpayer's ability to pay;

(2) be levied and collected only for public purposes;

(3) not be unjust, excessive, oppressive, or confiscatory;

(4) not be contrary to law, public policy, national economic policy, or in restraint of trade;

(c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;

(d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to the disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,

(e) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

[10] LOCAL GOV. CODE, Sec. 132 provides:

Section 132. *Local Taxing Authority*. — The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the *sanggunian* of the local government unit concerned through an appropriate ordinance.

[11] LOCAL GOV. CODE, Sec. 133 provides:

Section 133. *Common Limitations on the Taxing Powers of Local Government Units*. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

(b) Documentary stamp tax;

Cities are granted wide taxing powers. Except in certain instances, they can levy taxes, fees, and charges that provinces

---

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;
(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;
(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;
(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;
(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;
(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;
(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;
(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;
(k) Taxes on premiums paid by way of reinsurance or retrocession;
(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;
(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;
(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and
(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[12] LOCAL GOV. CODE, Sec. 186 provides:

Section 186. *Power To Levy Other Taxes, Fees or Charges*. — Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed

and municipalities may impose.[13] Cities are also authorized to impose tax rates by more than fifty percent (50%) of what provinces and municipalities may impose except for professional taxes and amusement taxes.[14]

Cities may levy business taxes under Section 151 in relation to Section 143 of the Local Government Code. Section 143 of the Local Government Code recognizes distinct types of businesses that are treated and taxed differently.[15]

Pertinent to this case is the distinction between the tax rates imposed on wholesalers and retailers. Section 143, paragraphs (b) and (d) of the Local Government Code provides:

ARTICLE II
Municipalities

SECTION 143. *Tax on Business*. — The municipality may impose taxes on the following businesses:

. . . .

---

under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

[13] LOCAL GOV. CODE, Sec. 151, par. 1 provides:

Section 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

[14] LOCAL GOV. CODE, Sec. 151, par. 2 provides:

Section 151. *Scope of Taxing Powers.* — . . .

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[15] See *Cagayan Electric Power and Light Co., Inc. v. City of Cagayan de Oro,* 698 Phil. 788, 811 (2012) [Per *J.* Carpio, Second Division].

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of :		*Amount of Tax Per Annum*
Less than ₱1,000.00		₱18.00
₱1,000.00 or more but less than	₱2,000.00	33.00
2,000.00 or more but less than	3,000.00	50.00
3,000.00 or more but less than	4,000.00	72.00
4,000.00 or more but less than	5,000.00	100.00
5,000.00 or more but less than	6,000.00	121.00
6,000.00 or more but less than	7,000.00	143.00
7,000.00 or more but less than	8,000.00	165.00
8,000.00 or more but less than	10,000.00	187.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	275.00
20,000.00 or more but less than	30,000.00	330.00
30,000.00 or more but less than	40,000.00	440.00
40,000.00 or more but less than	50,000.00	660.00
50,000.00 or more but less than	75,000.00	990.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,870.00
150,000.00 or more but less than	200,000.00	2,420.00
200,000.00 or more but less than	300,000.00	3,300.00
300,000.00 or more but less than	500,000.00	4,400.00
500,000.00 or more but less than	750,000.00	6,600.00
750,000.00 or more but less than	1,000,000.00	8,800.00
1,000,000.00 or more but less than	2,000,000.00	10,000.00
2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one percent (1%).

. . . .

(d) On retailers.

With gross sales or receipts for the preceding calendar year of:	*Rate of Tax Per Annum*
₱400,000.00 or less	2%
more than ₱400,000.00	1%

The Local Government Code, however, does not prescribe fixed tax rates that local government units should impose "but merely specifies the minimum and maximum tax rates" that can be imposed.[16] Local government units, through their respective sanggunians, are given wide discretion in determining the actual tax rates.[17]

The wholesale and retail businesses were categorized differently in Davao's old tax code.[18] Wholesalers were taxed under Section 1(b) while retailers were taxed under Section 1(d). Despite this distinction, retailers were deliberately taxed in the same manner and at the same rate as wholesalers under Davao's old tax code:[19]

ARTICLE 5. TAX ON FEES FOR BUSINESS, TRADE AND OCCUPATION

Section 1. Business Tax. — There is hereby imposed on the following business in the City of Davao an annual tax collectible quarterly, except on those for which fixed taxes are already provided for as follows:

. . . .

(b) On WHOLESALERS, DISTRIBUTORS, OR DEALERS, in any article of commerce of whatever kind or nature in accordance with the following schedules:

---

[16] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 250 (2003) [Per *J.* Puno, Third Division].

[17] *Id*.

[18] *Rollo*, pp. 1042-1043, Reply.

[19] *Id*. at 133, Comment.

Gross Sales/Receipts for the Preceding Calendar Year		Amount of Tax Per Annum
. . .	. . .	. . .
In excess [of] 2,000,000.00		At a rate of fifty (50%) percent of one percent (1%)
. . .	. . .	. . .

(d) On RETAILERS: amended as per Ordinance 718, included under paragraph (b) of this section[20]

The Local Government Code does not prohibit the imposition of the same tax rate on wholesalers and retailers. What is proscribed is the imposition of a tax rate greater than that provided by law. Pursuant to Section 151[21] in relation to Section 143(d)[22] of the Local Government Code, a city may impose a maximum tax rate of 1.5% on retailers with gross sales or receipts of more than ₱400,000.00.[23] Thus, Davao City may increase the

---

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

[21] LOCAL GOV. CODE, Sec. 151, par. 2 provides:

Section 151. *Scope of Taxing Powers*. — . . .

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[22] LOCAL GOV. CODE, Sec. 143(d), provides:

Section 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:

. . . .

(d) On retailers.

With gross sales or receipts for the preceding calendar year of:	*Rate of Tax Per Annum*
₱400,000.00 or less	2%
more than ₱400,000.00	1%

[23] Fifty percent of 1% is 0.5%, which is added to the rate imposed by law to arrive at the maximum tax rate that a city may impose. This may be summed up using the following equation: $0.5(x/100) + x = y$, where:

x is the rate imposed under the Local Government Code

y is the maximum tax rate that a city may impose (multiplied by 100 to arrive at the percentage)

tax rate imposed on retailers from the old rate of 50% of 1% or 0.5% to 1.5%.

Although local government units may adjust their tax rates, there are two (2) limitations to this power. The first limitation refers to the frequency by which local government units may adjust their tax rates. The second limitation pertains to the amount of each adjustment. Section 191 of the Local Government Code provides:

CHAPTER V
Miscellaneous Provisions

. . . .

Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances*. — Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

Should local government units decide to adjust their tax rates, Section 191 of the Local Government Code limits the amount of each adjustment and the frequency by which this authority may be exercised. Local government units can only adjust tax rates once every five (5) years. Moreover, the amount of adjustment should not exceed ten percent (10%) of the rates fixed under the Local Government Code.[24]

In its old tax code, Davao City distinguished between wholesalers and retailers but deliberately subjected them to the same tax rate.[25] The immediate imposition of the 1.25% tax rate on retailers under Davao City Ordinance No. 158-05, Series of 2005, as amended by City Ordinance No. 253, Series of 2006, cannot be considered as a correction of an erroneous classification. It is an upward adjustment in the tax rate, which falls under Section 191 of the Local Government Code. Assuming that the imposition of a 1.25% tax on retailers was brought

---

[24] LOCAL GOV. CODE, Sec. 191.

[25] *Rollo*, p. 133, Respondents' Comment on the Appeal to the Department of Justice.

about by the reclassification, it should still be considered as an upward adjustment in the tax rate.

Davao's old tax code was implemented before the effectivity in 1991 of the Local Government Code, which does not provide any transitory provision that creates an exemption for existing ordinances. Any amendment introduced to these ordinances will still be subject to the limitations under the Local Government Code. The reclassification, which aims to conform to the Local Government Code, still results in an increase in the tax rate. What cannot be done directly cannot be done indirectly.

Davao City cannot immediately increase the tax rate on retailers to 1.25% without violating Section 191 of the Local Government Code. Evidently, it will take time before Davao City can impose the maximum rate of 1.5% on retailers. However, this is a necessary limitation on the local government unit's power of taxation. Otherwise, taxpayers will be prejudiced. That Davao City decided to amend its tax code 14 years[26] after the effectivity of the Local Government Code cannot justify an immediate increase in its tax rates.

ACCORDINGLY, I concur in the result. Davao City may impose a tax rate of one percent (1%) on retailers from taxable years 2006 to 2011. Davao City may then adjust the tax rate on retailers on a staggered basis from 1% to 1.1% for taxable years 2011 to 2016 and from 1.1% to 1.21% for taxable years 2017 to 2021.

---

[26] The Local Government Code of 1991 took effect on January 1, 1992. Meanwhile, Davao City amended its old tax code in 2006.

EN BANC

[G.R. No. 215061. June 6, 2017]

AMANDO M. TETANGCO, JR., PETER B. FAVILA, JUANITA D. AMATONG, NELLY A. FAVIS-VILLAFUERTE, ALFREDO C. ANTONIO, IGNACIO R. BUNYE, MARIE MICHELLE N. ONG, BELLA M. PRUDENCIO, ESMEGARDO S. REYES, MA. CORAZON G. CATARROJA, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); FACTUAL FINDINGS OF THE COA ARE ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY AND IT IS ONLY WHEN IT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION MAY A PETITION FOR *CERTIORARI* BROUGHT TO ASSAIL ITS ACTIONS BE GRANTED.—** Absent any showing that COA capriciously, arbitrarily or whimsically exercised its discretion that would be tantamount to evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law resulting to the prejudice of the rights of the claimants, the Court finds no reason to set aside its decision. In the absence of grave abuse of discretion; the factual findings of the COA, which are undoubtedly supported by the evidence on record, must be accorded great respect and finality. COA, as the duly authorized agency to adjudicate money claims against government agencies and instrumentalities has acquired special knowledge and expertise in handling matters falling under its specialized jurisdiction. Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce. The Court has accorded not only respect but also finality to their findings especially when their decisions are not tainted with unfairness or arbitrariness that would amount

to grave abuse of discretion. Only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions. However, we find no grave abuse of discretion on the part of the COA in issuing the assailed decision.

2. **ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DEFENSE OF GOOD FAITH; UNAVAILING WHEN THERE IS PATENT DISREGARD OF CASE LAWS AND DIRECTIVES WHICH AMOUNTS TO GROSS NEGLIGENCE; CASE AT BAR.—** Anent petitioners' defense of good faith in approving the grant of EMEs to the *ex officio* members of the Monetary Board, this Court opines that said defense is unavailing. x x x By jurisprudence, the patent disregard of several case laws and COA directives, as in this case, amounts to gross negligence; hence, petitioners cannot be presumed in good faith. x x x We hold the petitioners-approving officers of the Monetary Board are liable for the excess EMEs which they received. As the records bear out, the petitioners who approve the EMEs failed to observe the following: *first*, there is already a law, the GAA, that limits the grant of EMEs; *second*; COA Memorandum No. 97-038 dated September 19, 1997 is a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed by Section 13, Article VII of the Constitution on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation; and *third*, the irregularity of giving additional compensation or allowances to *ex officio* members was already settled by jurisprudence, during the time that the subject allowances were authorized by the BSP. Indeed, the petitioners-approving officers' disregard of the aforementioned case laws, COA issuances, and the Constitution, cannot be deemed as a mere lapse consistent with the presumption of good faith.

APPEARANCES OF COUNSEL

The General Counsel of the Bangko Sentral ng Pilipinas, Office of the General Counsel & Legal Services Litigation & Administrative Investigation Group for petitioners.

DECISION

TIJAM, *J*.:

In this Petition for *Certiorari* under Rule 64 in relation to Rule 65,[1] petitioners assail the Commission on Audit's (COA) Resolution[2] dated August 12, 2014, denying the petitioners' Motion for Reconsideration[3] and Supplemental[4] Motion for Reconsideration, affirming COA's Decision No. 2013-227 dated December 23, 2013[5] and sustaining the Notices of Disallowance (ND) Nos. 10-004 GF (2007-2008)[6] and 10-004 GF (2007-2009)[7] both dated August 13, 2010.

The Facts

This case stemmed from the COA's act of disallowing the Extraordinary and Miscellaneous Expenses (EMEs) of the *ex officio* members of the Monetary Board (MBM), allegedly in violation of their respective constitutional rights.

Petitioner Amando M. Tetangco, Jr., (Tetangco, Jr.) is the Governor of the Banko Sentral ng Pilipinas (BSP). Petitioners Peter B. Favila (Favila), Juanita D. Amatong (Amatong), Nelly A. Favis-Villafuerte (Favis-Villafuerte), Alfredo C. Antonio (Antonio) and Ignacio R. Bunye (Bunye) were the MBM at the time that the allowance for EMEs was approved. Petitioners Marie Michelle N. Ong (Ong), Bella M. Prudencio (Prudencio), Esmegardo S. Reyes (Reyes) and Ma. Corazon G. Catarroja (Catarroja) were employees of the BSP who participated in the processing and approval of the EME.

---

[1] *Rollo*, pp. 3-42.

[2] *Id*. at 43.

[3] *Id*. at 94-119.

[4] *Id*. at 128-133.

[5] Penned by Chairperson Ma. Gracia M. Pulido Tan, with Commissioners Heidi L. Mendoza and Rowena V. Guanzon, concurring; *Id*. at 85-92.

[6] *Id*. at 44-45.

[7] *Id*. at 46-47.

COA's March 23, 2010 Decision No. 2010-048,[8] on the Performance Audit Report on the allocation and utilization of EME of the MBM, stated, among others, that " x x x *the ex-officio member of the Monetary Board x x x shall not be entitled to additional EMEs, other than that appropriated for him or her under the GAA as a cabinet member* x x x."[9]

Pursuant to this Decision, COA conducted an actual audit of the specific accounts that allegedly exceeded the prescribed limitations and/or were not properly documented/justified.

As a consequence, the EMEs of MBM Neri and Favila were disallowed and became the subject of ND dated August 13, 2010. Eventually, the MBM and BSP personnel, which include the petitioners, were held personally liable under ND Nos. 10-004 GF (2007-2008) and 10-004 GF (2007-2009).

Petitioners filed a Motion for Reconsideration and/or Appeal with the COA Director on May 26, 2011, but the same was denied. They filed a Petition for Review[10] with the COA, but the same was likewise denied in the COA's December 23, 2013 Decision No. 2013-227.[11]

---

[8] Penned by Chairman Reynaldo A. Villar, with Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura concurring, *Id*. at 252-263.

[9] "WHEREFORE, premises considered, this Commission finds the instant appeal partly meritorious, accordingly, the ceiling of the EMEs of qualified officials of the BSP shall be at the rates fixed in the appropriate resolutions of the Monetary Board and whose claim for reimbursement thereof shall be supported by receipts and/or other documents evidencing the disbursements. In the case, however, of the *ex offcio* member of the Monetary Board, he or she shall not be entitled to additional EMEs, other than that appropriated for him or her under the GAA as a cabinet member."; *Id.* at 260.

[10] *Id*. at 53-71.

[11] WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, Corporate Government Sector-A Decision No. 2012-13 dated September 11, 2012, which sustained the disallowance on the payment of Extraordinary and Miscellaneous Expenses to *ex officio* members of the Monetary Board in the amounts of ₱1,140,000.00 and

With their Motion for Reconsideration and Supplemental Motion for Reconsideration having been denied in the COA's Resolution dated August 12, 2014, they filed the instant petition.

The petitioners alleged that the COA acted without or in excess of its jurisdiction, and/or with grave abuse of discretion amounting to lack or excess of jurisdiction: (A) in disallowing the EMEs of the *ex officio* MBMs: (1) because the March 23, 2010 COA Decision No. 2010-048, should not be applied since the disallowed EMEs were incurred by the *ex officio* MBMs in the years 2007, 2008 and 2009, which years are prior to the date of finality (May 5, 2010) of the said decision; (2) since as MBMs, they incur extraordinary and miscellaneous expenses in the discharge of their functions, separate and distinct from the expenses they incur in relation to their principal office; (3) since it cannot be said that the MBMs failed to exercise the highest degree of responsibility in approving the grant of EMEs; (4) since it violates the equal protection clause under Article III, Section 1 of the 1987 Constitution; and (B) in including Petitioner Favila as one of the persons solidarily liable under ND No. 10-004 GF (2007-2008), despite the fact that he had no participation in the approval of the EMEs covered by the ND.

For its part, the COA countered that: Petitioners failed to show grave abuse of discretion on the part of COA in rendering its assailed Decision and subsequent Resolution; COA did not gravely abuse its discretion in disallowing the EMEs of the *ex officio* MBM, because the allowances were based on the applicable laws, jurisprudence, rules and regulations; the defense of good faith in approving the grant of EMEs to the *ex officio* MBM with reliance on BSP's independence and autonomy is unavailing; there was no violation of the equal protection clause

---

₱373,613.62, respectively, is hereby AFFIRMED. Notice of Disallowance Nos. 10-004GF (2007-2008) and 10-004GF (2007-2009), both dated August 13, 2010, are hereby SUSTAINED WITH MODIFICATION, insofar as Ms. Elizabeth S. Eizaguirre is EXCLUDED from among the persons liable.; *Id.* at 91.

in the subject disallowances; and petitioner Favila is solidarily liable with other officials of the BSP under ND No. 10-004 GF (2007-2009) because he was a member of the Monetary Board and also the recipient of the irregular EMEs.

The Issue

Simply, the core issue boils down to whether or not the COA gravely abused its discretion when it disallowed the EMEs of the *ex officio* MBM.

The Ruling

We rule in the negative.

In disallowing the EMEs of the *ex officio* MBM, COA did not abuse the exercise of its discretion as its denial was grounded on the law, facts and circumstances that would warrant such disallowance arising from the following observations:

> The nature of EME, however, was not the foremost reason for the disallowance, but the ***limitations imposed by law*** in availing such allowance. x x x the *ex officio* members of the Monetary Board are entitled to EMEs ***to the extent of that appropriated in the General Appropriations Act (GAA). Since the ex officio members already received their EMEs from their respective Departments (as appropriated in the GAA)***, the additional EMEs from BSP are no longer necessary. It must be stressed that ***the ex officio position is actually and, in legal contemplation, part of the principal office; hence, the ex officio member is no longer entitled to receive any form of compensation, allowance or other euphemism from the extended agency***. x x x we quote the pertinent discussion of the subject COA Decision: [Emphasis Supplied.]
>
>> x x x In fact, the *ex officio* membership of the cabinet member in the Monetary Board does not comprise 'another office' but rather annexed to or is required by the primary functions of his or her official position as cabinet member. Of equal significance, too, is that the *ex offcio* member of the Monetary Board already receives separate appropriations under the GAA for EMEs, he or she being a member of the cabinet. Being such, it is highly irregular that the said *ex officio* member of the Monetary Board,

> who performs only additional duties by virtue of his or her primary functions, will be provided with additional EMEs, which in this case, appear much higher than his or her appropriations for the same expenses under the GAA as a cabinet member. x x x[12]

x x x x x x x x x

x x x the irregularity of giving additional compensation or allowances to *ex officio* members was no longer a novel issue during the time that the subject allowances were authorized by BSP. As early as 1991, the issue was already ruled on by the Supreme Court in the case of *Civil Liberties Union vs. Executive Secretary*,[13] followed by several jurisprudence in the cases of *Dela Cruz, et al. vs. COA*,[14] and *National Amnesty Commission vs. COA*,[15] to name a few.[16] (Emphasis supplied)

Absent any showing that COA capriciously, arbitrarily or whimsically exercised its discretion that would be tantamount to evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law resulting to the prejudice of the rights of the claimants, the Court finds no reason to set aside its decision.

In the absence of grave abuse of discretion, the factual findings of the COA, which are undoubtedly supported by the evidence on record, must be accorded great respect and finality. COA, as the duly authorized agency to adjudicate money claims against government agencies and instrumentalities has acquired special knowledge and expertise in handling matters falling under its specialized jurisdiction.[17]

---

[12] *Id*. at 88.

[13] 272 Phil. 147 (1991).

[14] 422 Phil. 473 (2001).

[15] 481 Phil. 279 (2004).

[16] *Rollo*, p. 91.

[17] *Madag Buisan, et al. v. Commission on Audit and Department of Public Works and Highways*, G.R. No. 212376, January 31, 2017.

Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.[18] The Court has accorded not only respect but also finality to their findings especially when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[19] Only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions.[20] However, we find no grave abuse of discretion on the part of the COA in issuing the assailed decision.

Anent petitioners' defense of good faith in approving the grant of EMEs to the *ex officio* members of the Monetary Board, this Court opines that said defense is unavailing.

As correctly pointed out by the COA:

This Commission finds that the Petitioners MBM, in approving the irregular allowance, were remiss in their duty to protect the interest of the Bank. x x x ***they ought to know that the ex officio members of the Monetary Board were already receiving the same allowance from their respective Departments, hence, they were no longer entitled to the additional EMEs***.

It must be emphasized that the degree of diligence required from bank employees and officials is not ordinary but requires ***the highest standards of integrity and performance***. Section 2 of R.A. No. 8791, also known as the General Banking Law of 2000, provides for the degree of diligence expected from the industry, to wit:

> **Section 2.** *Declaration Of Policy.* — The State recognizes the vital role of banks providing an environment conducive to

---

[18] *TESDA v. The Commission on Audit; et al.*, G.R. No. 196418, February 10, 2015, 250 SCRA 247.

[19] *Id*.

[20] *Id*.

the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. xxx

In support of the above privision of the law, the Supreme Court, in the case of *Philippine National Bank v. Rodriguez, et al.* (G.R. No. 170325, September 26, 2008), ruled, *viz*:

Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees. x x x

x x x ***for failure of the Petitioners MBM to exercise the highest degree of responsibility required by law, their defense of good faith fails***.[21] [Emphasis Supplied.]

By jurisprudence, the patent disregard of several case laws and COA directives, as in this case, amounts to gross negligence; hence, petitioners cannot be presumed in good faith. In *TESDA vs. The Commission on Audit, et al.*,[22] this Court ruled that:

In *Casal v. COA,*[23] x x x we held the approving officials liable for the refund of the incentive award due to their patent disregard of the issuances of the President and the directives of COA. In *Casal*, we ruled that ***the officials' failure to observe the issuances amounted to gross negligence, which is inconsistent with the presumption of good faith***. We applied the *Casal* ruling in *Velasco v. COA*,[24] to wit:

x x x ***the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are***

---

[21] *Rollo*, p. 89.

[22] 729 Phil. 60, 76 (2014).

[23] 538 Phil. 634 (2006).

[24] 695 Phil. 226 (2012).

accountable for the refund of the subject incentives which they received. [Emphasis Supplied]

Applying by analogy the above rulings, We hold the petitioners-approving officers of the Monetary Board are liable for the excess EMEs which they received.

As the records bear out, the petitioners who approve the EMEs failed to observe the following: *first*, there is already a law, the GAA, that limits the grant of EMEs; *second*; COA Memorandum No. 97-038 dated September 19, 1997 is a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed by Section 13, Article VII of the Constitution[25] on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation; and *third*, the irregularity of giving additional compensation or allowances to *ex officio* members was already settled by jurisprudence,[26] during the time that the subject allowances were authorized by the BSP.

Indeed, the petitioners-approving officers' disregard of the aforementioned case laws, COA issuances, and the Constitution, cannot be deemed as a mere lapse consistent with the presumption of good faith.

---

[25] Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not, during his tenure, be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

[26] *Civil Liberties Union v. Executive Secretary, supra* note 13; *Dela Cruz, et al. v. COA, supra* note 14; and *National Amnesty Commission v. COA, supra* note 15.

In line with this, We cannot subscribe to petitioner Favila's insistence that he should not be liable in the approving, processing and receiving of EMEs on the basis that he did not participate in the adoption of the resolutions authorizing the payment of the EMEs.

As pointed out during the deliberation by Our learned colleague, Hon. Justice Lucas P. Bersamin, the doctrine on the non-liability of recipients of disallowed benefits based on good faith did not extend to petitioner Favila for the following reasons: *first*, there was precisely a law (the relevant GAAs) that expressly limited the amounts of the EMEs to be received by the ex officio members; and *second*, in so far as ND No. 10-004GF (2007-2008)[27] is concerned, his liability arose from his receipt of the subject allowances in 2008, when he was an *ex officio* member of the Board. Hence, good faith did not favor him not only because he had failed to exercise the highest degree of responsibility, but also because as a cabinet member he was aware of the extent of the benefits he was entitled to.

Verily, petitioners Tetangco, Jr., Favila, Amatong, Favis-Villafuerte, Antonio, and Bunye, who were members of the Monetary Board were expected to keep abreast of the laws that may affect the performance of their functions. The law, jurisprudence and COA issuances subject of this case are of such clearness that the concerned officials could not have mistaken their meaning. It was incumbent upon them to instruct Petitioners Ong, Prudencio, Reyes and Catarroja who participated in the processing of the EMEs, to comply with these laws. Unfortunately, they did not. Thus, they cannot find shelter in the defense of good faith.

WHEREFORE, the Petition is **DISMISSED**. The Commission on Audit's Resolution dated August 12, 2014, denying the petitioners' Motion for Reconsideration[28] and Supplemental Motion for Reconsideration, affirming its Decision

---

[27] *Supra* at Note 6.

[28] *Rollo*, pp. 94-119.

No. 2013-227 dated December 23, 2013 and sustaining the Notices of Disallowance Nos. 10-004 GF (2007-2008) and 10-004 GF (2007-2009) both dated August 13, 2010, are hereby **AFFIRMED** *in toto*.

SO ORDERED.

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

Mendoza and *Martires, JJ.,* on leave.

EN BANC

[G.R. No. 226792. June 6, 2017]

SOFRONIO B. ALBANIA, *petitioner, vs.* **COMMISSION ON ELECTIONS and EDGARDO A. TALLADO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PRIMORDIAL ISSUE TO BE RESOLVED THEREIN IS WHETHER THE RESPONDENT TRIBUNAL COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION; GRAVE ABUSE OF DISCRETION, DEFINED.—** In a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, the primordial issue to be resolved is whether the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution. The term "grave

abuse of discretion" is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. Grave abuse of discretion arises when a court or tribunal violates the Constitution, the law or existing jurisprudence. And as a matter of policy, this Court will not interfere with the resolutions of the COMELEC unless it is shown that it had committed grave abuse of discretion. Thus, in the absence of grave abuse of discretion, a Rule 64 petition will not prosper.

2. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; HAS THE AUTHORITY TO DETERMINE THE TRUE NATURE OF THE CASES FILED BEFORE IT CONCOMITANT TO THE POWERS GRANTED TO IT BY THE CONSTITUTION.—** The Constitution has vested in the COMELEC broad powers, involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections, but also the resolution and determination of election controversies. It also granted the COMELEC the power and authority to promulgate its rules of procedure, with the primary objective of ensuring the expeditious disposition of election cases. Concomitant to such powers is the authority of the COMELEC to determine the true nature of the cases filed before it. Thus, it examines the allegations of every pleading filed, obviously aware that in determining the nature of the complaint or petition, its averments, rather than its title/caption, are the proper gauges.

3. **ID.; LOCAL GOVERNMENT; THREE-TERM LIMIT RULE; PROVIDES THAT AFTER BEING ELECTED AND SERVING FOR THREE CONSECUTIVE TERMS, AN ELECTIVE LOCAL OFFICIAL CANNOT SEEK IMMEDIATE REELECTION FOR THE SAME OFFICE IN THE NEXT REGULAR ELECTION BECAUSE HE IS INELIGIBLE; PURPOSE.—** The three-term limit rule is embodied in Section 8 of Article X of the Constitution, x x x which is restated in Section 43 of the Local Government Code x x x. The objective of imposing the three-term limit rule was to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a

prolonged stay in the same office. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible.

4. **ID.; ELECTION LAWS; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY; A VIOLATION OF THE THREE-TERM LIMIT RULE IS AN INELIGIBILITY WHICH IS A PROPER GROUND THEREFOR.—** Section 74 of the OEC provides that the certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office. The word "eligible" in Section 74 means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office. And We had held that a violation of the three-term limit rule is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a COC under Section 78 of the Omnibus Election Code x x x.

5. **ID.; ID.; ID.; ID.; ID.; MUST BE FILED NOT LATER THAN TWENTY-FIVE DAYS FROM THE TIME OF THE FILING OF THE CERTIFICATE OF CANDIDACY.—** As the petition filed is indeed a petition under Section 78 of the OEC, the filing of the same must comply with the period prescribed therein, *i.e.*, the filing of the same must be made not later than twenty-five days from the time of the filing of the certificate of candidacy. In this case, respondent filed his COC for Governor of Camarines Norte for the 2016 elections on October 16, 2015, and he had 25 days therefrom to file the petition for denial of due course or cancellation of COC on the ground of violation of the three-term limit rule, which fell on November 10, 2015. However, the petition was filed only on November 13, 2015 which was already beyond the period to file the same; thus, [We] find no grave abuse of discretion committed by the COMELEC in dismissing the petition for being filed out of time.

6. **ID.; LOCAL GOVERNMENT; THREE-TERM LIMIT RULE; CONDITIONS.—** We held that two conditions must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule, which are: (1) that the

official concerned has been elected for three consecutive terms in the same local government post, and (2) that he has fully served three consecutive terms. x x x In this case, while respondent ran as Governor of Camarines Norte in the 2007 elections, he did not win as such. It was only after he filed a petition for correction of manifest error that he was proclaimed as the duly-elected Governor. He assumed the post and served the unexpired term of his opponent from March 22, 2010 until June 30, 2010. Consequently, he did not hold the office for the full term of three years to which he was supposedly entitled to. Thus, such period of time that respondent served as Governor did not constitute a complete and full service of his term. The period when he was out of office involuntarily interrupted the continuity of his service as Governor. As he had not fully served the 2007-2010 term, and had not been elected for three consecutive terms as Governor, there was no violation of the three-term limit rule when he ran again in the 2016 elections.

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

POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RESOLUTION NO. 9523; DISQUALIFICATION OF CANDIDATES; A PETITION FOR DISQUALIFICATION MAY BE THE PROPER REMEDY IN CASE AT BAR.— [A] Petition for Disqualification may be the proper remedy x x x [, pursuant to] Rule 25 of Commission on Elections Resolution No. 9523 x x x. In my view, the provision refers to Sections 12 and 18 of the Omnibus Election Code and Section 40 of the Local Government Code. However, it refers as well to the Constitution, which provides for the term limits in question in this case.

APPEARANCES OF COUNSEL

Navarro Jumamil Escolin Law Offices for petitioner.
The Solicitor General for public respondent.
Botor Botor Bracia & Associates Law and Notarial Offices for private respondent.

DECISION

PERALTA, *J*.:

Challenged in this petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Civil Procedure is the Resolution[1] dated August 24, 2016 of the Commission on Elections (*COMELEC*) *En Banc* which upheld the Resolution[2] dated April 22, 2016 of the COMELEC Second Division dismissing the petition to deny due course to or to cancel respondent Edgardo A. Tallado's Certificate of Candidacy (COC) for being filed out of time.

The facts are as follows:

In the May 14, 2007 National and Local Elections, respondent Edgardo A. Tallado and Jesus O. Typoco were both candidates for the position of Governor in Camarines Norte. After the counting and canvassing of votes, Typoco was proclaimed as the winner. Respondent questioned Typoco's proclamation by filing with the COMELEC, a petition for correction of a manifest error. The Petition was decided[3] in respondent's favor on March 5, 2010 and the latter assumed the position of Governor of Camarines Norte from March 22, 2010 to June 30, 2010, the end of the 2007-2010 term.

Respondent ran again in the 2010[4] and 2013[5] National and Local Elections where he won and served as Governor of Camarines Norte, respectively.

---

[1] Per Commissioner Ma. Rowena Amelia V. Guanzon, concurred in by Chairman J. Andres D. Bautista, Commissioners Christian Robert S. Lim, Al A. Parreño, Luie Tito F. Guia, Arthur D. Lim, and Sheriff M. Abas; *rollo*, pp. 43-52.

[2] Per Presiding Commissioner Al A. Parreño, and concurred in by Commissioners Arthur D. Lim and Sheriff M. Abas; *id*. at 31-38.

[3] *Typoco v. Commission on Elections*, 628 Phil. 288 (2010).

[4] *Rollo*, p. 76.

[5] *Id*. at 71.

On October 16, 2015, respondent filed his Certificate of Candidacy[6] as Governor of Camarines Norte in the May 9, 2016 National and Local elections.

On November 13, 2015, petitioner, a registered voter of Poblacion Sta. Elena, Camarines Norte, filed a petition[7] for respondent's disqualification from running as Governor based on Rule 25 of COMELEC Resolution No. 9523[8] on two grounds: (1) he violated the three term limit rule under Section 43 of RA No 7160, otherwise known as the *Local Government Code of 1991* (*LGC*); and (2) respondent's suspension from office for one year without pay, together with its accessory penalties, after he was found guilty of oppression and grave abuse of authority in the Ombudsman's Order[9] dated October 2, 2015.

In his Verified Answer, respondent argued that since the petition was primarily based on his alleged violation of the three-term limit rule, the same should have been filed as a petition to deny due course to or cancel certificate of candidacy under Rule 23 of COMELEC Resolution 9523, in relation to Section 78 of the Omnibus Election Code, as the ground cited affected a candidate's eligibility; that based on Section 23, the petition should had been filed on November 10, 2015, but the petition was filed only on November 13, 2015, hence, the same had already prescribed and must be dismissed. His suspension from office is also not a ground for a petition for disqualification. On the substantive issues, he denied violating the three-term limit rule as he did not fully serve three consecutive terms since he only served as Governor for the 2007 elections from March 22, 2010 to June 30, 2010.

---

[6] *Id.* at 70.

[7] *Id*. at 53-68.

[8] *IN THE MATTER OF THE AMENDMENT TO RULES 23, 24, AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS.*

[9] *Rollo*, pp. 79-87.

On April 22, 2016, the COMELEC Second Division dismissed the petition for being filed out of time. It ruled that a violation of the three-term limit rule and suspension from office as a result of an administrative case are not grounds for disqualification of a candidate under the law; that the alleged violation of three-term limit rule is a ground for ineligibility which constituted false material representation under Section 78 of the OEC; and such petition must be filed within 25 days from the time of filing of the COC, which respondent failed to do.

Petitioner filed a motion for reconsideration with the COMELEC *En Banc*, which dismissed the same in a Resolution dated August 24, 2016.

The COMELEC *En Banc* echoed the Division's findings that the grounds relied upon by petitioner are not proper for a petition for disqualification but one for denial of due course to or cancellation of respondent's COC, which was filed out of time. It then continued to rule on the merits finding that respondent did not serve the full 2007-2010 term as Governor of Camarines Norte, thus, cannot be considered as one term for purposes of counting the three-term threshold; and that the ground for a candidate's disqualification referred to by Section 40 (b) of the LGC is the actual removal from office as a result of an administrative case, and not mere suspension as imposed by the Ombudsman.

Dissatisfied, petitioner is now before us in a petition for *certiorari* raising the following grounds, to wit: Whether or not the respondent COMELEC acted with grave abuse of discretion amounting to lack of jurisdiction: (1) in ruling that the grounds relied upon are not proper grounds for a petition for disqualification; (2) in ruling that even if the petition for disqualification is considered one for denial of due course to or cancellation of private respondent Tallado's COC, the same is filed out of time; (3) in failing to rule that private respondent Tallado should be disqualified pursuant to Section 43 of RA No. 7160 or the LGC; and (4) in failing to rule that private

respondent Tallado should be disqualified due to the Order dated October 2, 2015 by the Office of the Ombudsman.[10]

We find the petition without merit.

In a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, the primordial issue to be resolved is whether the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution.[11] The term "grave abuse of discretion" is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[12] Grave abuse of discretion arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.[13] And as a matter of policy, this Court will not interfere with the resolutions of the COMELEC unless it is shown that it had committed grave abuse of discretion. Thus, in the absence of grave abuse of discretion, a Rule 64 petition will not prosper.[14]

The grounds for disqualification of a candidate are found under Sections 12 and 68 of Batas Pambansa Blg. 881, as amended, otherwise known as the *Omnibus Election Code of*

---

[10] *Id*. at 7-8.

[11] *Arnado v. COMELEC*, G.R. No. 210164, August 18, 2015, 767 SCRA 168, 195.

[12] See *Tan v. Spouses Antazo*, 659 Phil. 400, 404 (2011), citing *Office of the Ombudsman v. Magno*, 592 Phil. 636, 652 (2008), citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, 520 Phil. 92, 107 (2006); *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005), citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002), citing *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998).

[13] *Cabrera v. Commission on Elections*, 588 Phil. 969, 974 (2008).

[14] *Arnado v. COMELEC, supra* note 11.

the Philippines, as well as Section 40 of the Local Government Code, which respectively provide:

SEC. 12. *Disqualifications*. Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service or sentence, unless within the same period he again becomes disqualified.

x x x x x x x x x

SEC. 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any, elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

x x x x x x x x x

SECTION 40. Disqualifications - The following persons are disqualified from running for any elective local position:

(a) Those sentence by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or

more of imprisonment, within two (2) years after serving sentence;
(b) Those removed from office as a result of an administrative case;
(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
(d) Those with dual citizenship;
(e) Fugitive from justice in criminal or nonpolitical cases here or abroad;
(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
(g) The insane or feeble-minded.

Petitioner filed the petition for disqualification of respondent on the grounds that he allegedly violated the three-term limit rule provided under the Constitution and the LGC; and that he was suspended from office as a result of an administrative case. Notably, however, a reading of the grounds enumerated under the above-quoted provisions for a candidate's disqualification does not include the two grounds relied upon by petitioner. Thus, the COMELEC Second Division was correct when it found that the petition was not based on any of the grounds for disqualification as enumerated in the foregoing statutory provisions.

Respondent's suspension from office is indeed not a ground for a petition for disqualification as Section 40(b) clearly speaks of removal from office as a result of an administrative offense that would disqualify a candidate from running for any elective local position. In fact, the penalty of suspension cannot be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications for the office as provided under Section 66(b) of R.A. No. 7160, to wit:

SEC. 66. Form and Notice of Decision. — x x x

(b) The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications for the office.

While the alleged violation of the three-term limit rule is not a ground for a petition for disqualification, however, the COMELEC Second Division found that it is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a Certificate of Candidacy under Section 78 of the OEC, hence considered the petition as such.

The Constitution has vested in the COMELEC broad powers, involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections, but also the resolution and determination of election controversies.[15] It also granted the COMELEC the power and authority to promulgate its rules of procedure, with the primary objective of ensuring the expeditious disposition of election cases.[16] Concomitant to such powers is the authority of the COMELEC to determine the true nature of the cases filed before it. Thus, it examines the allegations of every pleading filed, obviously aware that in determining the nature of the complaint or petition, its averments, rather than its title/caption, are the proper gauges.[17]

Since the petition filed was a petition to deny due course to or to cancel a certificate of candidacy, such petition must be filed within 25 days from the time of filing of the COC, as provided under Section 78 of the Omnibus Election Code. However, as the COMELEC found, the petition was filed beyond the reglementary period, and dismissed the petition for being filed out time. The COMELEC *En Banc* affirmed such dismissal.

We agree.

The three-term limit rule is embodied in Section 8 of Article X of the Constitution, to wit:

> Section 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time

---

[15] See *Dela Llana v. Commission on Elections*, 462 Phil. 355 (2003), citing Article IX (C), Section 2.

[16] *Id.*, citing Article IX (C), Section 3.

[17] *Id.*, citing *Enojas v. COMELEC*, 347 Phil. 510 (1997).

shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

which is restated in Section 43 of the Local Government Code, thus:

Section 43. *Term of Office*. – (a) x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

The objective of imposing the three-term limit rule was to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office.[18] After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible.[19]

Section 74 of the OEC provides that the certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office. The word "eligible" in Section 74 means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.[20] And We had held[21] that a violation of the three-term limit rule is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a COC under Section 78 of the Omnibus Election Code, to wit:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to

[18] *Mayor Talaga v. COMELEC*, 696 Phil. 786, 833-834 (2012).

[19] *Aratea v. Commission on Elections*, 696 Phil. 700, 731-732 (2012).

[20] *Id*. at 732.

[21] *Id*. at 732-733, citing *Latasa v. Commission on Elections*,463 Phil. 296 (2003), *Atty. Rivera III v. Commission on Elections (Rivera)*, 551 Phil. 37 (2007); *Ong v. Alegre*, 515 Phil. 442 (2006).

cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

As the petition filed is indeed a petition under Section 78 of the OEC, the filing of the same must comply with the period prescribed therein, *i.e.*, the filing of the same must be made not later than twenty-five days from the time of the filing of the certificate of candidacy.[22] In this case, respondent filed his COC for Governor of Camarines Norte for the 2016 elections on October 16, 2015, and he had 25 days therefrom to file the petition for denial of due course or cancellation of COC on the ground of violation of the three-term limit rule, which fell on November 10, 2015. However, the petition was filed only on November 13, 2015 which was already beyond the period to file the same; thus, find no grave abuse of discretion committed by the COMELEC in dismissing the petition for being filed out of time.

Petitioner's insistence that the petition filed with the COMELEC was based on Rule 25 of COMELEC Resolution No. 9523 which provides:

Rule 25 — Disqualification of Candidates

Section 1. *Grounds*. — Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court, guilty of, or found by the Commission to be suffering from any disqualification provided by law or the Constitution.

x x x x x x x x x

Section 3. *Period to File Petition*. — The Petition shall be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation.

is not meritorious. Rule 25 of Comelec Resolution No. 9523 refers to disqualification of candidates and the grounds thereof,

[22] *Aznar v. Commission on Elections*, 264 Phil. 307, 318 (1990).

which are those provided in Sections 12 and 68 of the OEC and Section 40 of the LGC, as quoted in the early part of the decision. To reiterate, a violation of the three-term limit rule is not included among the grounds for disqualification, but a ground for a petition to deny due course to or cancel certificate of candidacy; thus, it is Rule 23 of COMELEC Resolution No. 9523 which is applicable, and We quote:

Rule 23 — Petition to Deny Due Course to or Cancel Certificates of Candidacy

Section 1. *Ground for Denial or Cancellation of Certificate of Candidacy.* – A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

Section 2. *Period to File Petition.* — The Petition must be filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

We, likewise, find no grave abuse of discretion committed by the COMELEC *En Banc* when it found that the petition to deny due course to or cancel a COC will not also prosper as there was no violation of the three- term limit rule. Petitioner alleges that since respondent had already been elected and had served as Governor of Camarines Norte for three consecutive terms, *i.e.*, 2007, 2010, and 2013, he is proscribed from running for the same position in the 2016 elections as it would already be his fourth consecutive term.

We are not convinced.

We held that two conditions must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule, which are: (1) that the official concerned has been elected for three consecutive terms in the same local

government post, and (2) that he has fully served three consecutive terms.[23]

In *Aldovino, Jr. v. Commission on Elections,*[24] We said:

> As worded, the constitutional provision fixes the term of a local elective office and limits an elective official's stay in office to no more than three consecutive terms. x x x
>
> Significantly, this provision refers to a "term" as a period of time - three years - during which an official has title to office and can serve. *Appari v. Court of Appeals*, a Resolution promulgated on November 28, 2007, succinctly discusses what a term connotes, as follows:
>
> > The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office. According to Mechem, the term of office is the period during which an office may be held. Upon expiration of the officer's term, unless he is authorized by law to holdover, his rights, duties and authority as a public officer must *ipso facto* cease. In the law of public officers, the most and natural frequent method by which a public officer ceases to be such is by the expiration of the terms for which he was elected or appointed.
>
> A later case, *Gaminde v. Commission on Audit*, reiterated that he term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another.[25]

In this case, while respondent ran as Governor of Camarines Norte in the 2007 elections, he did not win as such. It was only after he filed a petition for correction of manifest error that he was proclaimed as the duly- elected Governor. He assumed the post and served the unexpired term of his opponent from March 22, 2010 until June 30, 2010. Consequently, he did not hold the office for the full term of three years to which he was supposedly entitled to. Thus, such period of time that respondent

---

[23] *Lonzanida v. Commission on Elections*, 370 Phil. 625, 636 (1999).

[24] *Aldovino, Jr. v. Commission on Elections*, 623 Phil. 876 (2009).

[25] *Id.* at 893-894. (Emphases omitted)

served as Governor did not constitute a complete and full service of his term. The period when he was out of office involuntarily interrupted the continuity of his service as Governor.[26] As he had not fully served the 2007-2010 term, and had not been elected for three consecutive terms as Governor, there was no violation of the three-term limit rule when he ran again in the 2016 elections.

We quote with approval the COMELEC *En Banc's* ruling on the matter as follows:

x x x x x x x x x

The Supreme Court has ruled in several occasions that in order for the ineligibility under the "three-term limit rule" to apply, two conditions must concur: first, that the official concerned has been elected for three consecutive terms in the same local government post; and second, that he has fully served three consecutive terms.

While it is undisputed that respondent was duly elected as Governor of Camarines Norte for three consecutive terms, the issue lies on whether he is deemed to have fully served his first term, specifically, whether the service by an elected official of a term less than the full three years arising from his being declared as the duly elected official in an election contest is considered full service of the term for purposes of counting the three-term threshold.

The facts involved in the present case are similar to those involved in *Abundo v. COMELEC*, where the Court declared:

> There can be no quibbling that, during the term 2004-2007, and with the enforcement of the decision of the election protest in his favor, Abundo assumed the mayoralty post only on May 9, 2006 and served the term until June 30, 2007 or for a period of a little over one year and one month. xxx It cannot be said that Mayor Abundo was able to serve fully the entire 2004-2007 term to which he was otherwise entitled.
>
> x x x x x x x x x
>
> Needless to stress, the almost two-year period during which Abundo's opponent actually served as Mayor is and ought to

[26] *Adormeo v. Commission on Elections*, 426 Phil. 472, 476 (2002).

> be considered an involuntary interruption of Abundo's continuity of service. An involuntary interrupted term, cannot, in the context of the disqualification rule, be considered as one term for purposes of counting the three-term threshold.
>
> x x x x x x x x x
>
> As previously stated, the declaration of being the winner in an election protest grants the local elected official the right to serve the unexpired portion of the term. Verily, while he was declared the winner in the protest for the mayoralty seat for the 2004-2007 term, Abundo's full term has been substantially reduced by the actual service rendered by his opponent (Torres). Hence, there was actual involuntary interruption in the term of Abundo and he cannot be considered to have served the full 2004-2007 term.

Applying the foregoing in the instant case, since Respondent did not serve the full 2007-2010 term, it cannot be considered as one term for purposes of counting the three-term threshold. Consequently, Respondent cannot be said to have continuously served as Governor for three consecutive terms prior to the 2016 elections.

x x x x x x x x x[27]

WHEREFORE, the petition is **DENIED**. The Resolution dated August 24, 2016 of the Commission on Elections *En Banc* is hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Reyes, Perlas-Bernabe, Jardeleza, Caguioa, and *Tijam, JJ.*, concur.

Leonen, J., see separate concurring opinion.

Mendoza, J., on official leave.

Martires, J., on wellness leave.

---

[27] *Rollo*, pp. 50-51.

SEPARATE CONCURRING OPINION

LEONEN, *J*.:

I concur but with the qualification that a Petition for Disqualification may be the proper remedy. Rule 25 of Commission on Elections Resolution No. 9523 quoted in the decision states:

Rule 25 -Disqualification of Candidates

Section 1. *Grounds.* - Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court, guilty of, or found by the Commission to be suffering from any disqualification provided by law or the Constitution. (Emphasis supplied)

In my view, the provision refers to Sections 12 and 18 of the Omnibus Election Code and Section 40 of the Local Government Code. However, it refers as well to the Constitution, which provides for the term limits in question in this case. Article X, Section 8 of the Constitution provides:

The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Nonetheless, I agree with the results and the rest of the doctrines expounded with clarity by the ponente.

THIRD DIVISION

[A.M. No. RTJ-16-2450. June 7, 2017]
(Formerly A.M. No. 14-4324-RTJ)

PO1 MYRA S. MARCELO, *complainant, vs,* **JUDGE IGNACIO C. BARCILLANO, BRANCH 13, REGIONAL TRIAL COURT (RTC), LIGAO CITY, ALBAY,** *respondent.*

SYLLABUS

REMEDIAL LAW; RULES OF COURT; CHARGES AGAINST JUDGES; CONDUCT UNBECOMING OF A JUDGE; CLASSIFIED AS A LIGHT CHARGE; PENALTY.— Judge Barcillano's dissatisfaction with Executive Judge Rosero's decision to post police officers in the Hall of Justice does not justify his acts of accosting complainant. While he may be security conscious, checking the booking of firearms is not part of his job. Further, his act of demanding for complainant's firearms and ARE in an aggressive manner effectively harassed the already nervous police officer. If, as Judge Barcillano claims, he strongly believed that the presence of the police officers violates existing rules, the appropriate course of action would have been to take up the issue with Executive Judge Rosero, not the police officers who are merely obeying orders. We also agree with the Investigating Justice that regardless of the reason or motive behind the altercation, Judge Barcillano, being a magistrate, should have observed judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language. x x x Under Sections 10(1) and 11(C) of Rule 140 of the Rules of Court, unbecoming conduct is classified as a light charge punishable by: (1) a fine of not less than one thousand pesos (₱1,000.00) but not exceeding ten thousand pesos (₱10,000.00), and/or (2) censure; (3) reprimand; (4) admonition with warning.

APPEARANCES OF COUNSEL

Edwin G. Engay for complainant.

DECISION

JARDELEZA, *J*.:

On September 25, 2014, the Office of the Court Administrator (OCA) received a complaint-affidavit[1] for grave misconduct from PO1 Myra S. Marcelo (complainant) against Judge Ignacio C. Barcillano (Judge Barcillano) and Atty. Ernesto Lozano, Jr. (Atty. Lozano) of Branch 13 of the Regional Trial Court (RTC) and the Public Attorney's Office (PAO), respectively, in Ligao City, Albay.

The complainant alleged that on July 4, 2014, she and her companion PO1 Jovie Batacan (PO1 Batacan) were "harassed and humiliated" by Judge Barcillano who acted "in unison, confederation and conspiracy" with Atty. Lozano.[2] Complainant attached her *Sinumpaang Salaysay*[3] in the complaint-affidavit along with sworn statements executed by PO1 Batacan[4] and Leonardo Rosero (Leonardo).[5] She also attached Certifications issued by the Ligao City Police Station regarding the official police blotters made about the July 4, 2014 incident.[6]

In her *Sinumpaang Salaysay* dated July 7, 2014, complainant narrated that she and PO1 Batacan were on duty as security officers at the Ligao Regional Trial Court Building (Hall of Justice) when they were approached by Judge Barcillano and Atty. Lozano. Although PO1 Batacan immediately stood up to greet the newcomers, complainant, who claims to have been taken by surprise, took a while before she was able to stand up, bow her head, and greet them "Sir." Despite this, she alleged

---

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

[2] *Id.* at 2.

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

[4] *Id.* at 11.

[5] *Id.* at 12-13.

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

that Judge Barcillano asked Lorna Roquid, an RTC employee sitting with the police officers at the security desk at the time of the incident, to leave and told complainant to sit down next to him. When she complied, Judge Barcillano asked her to go back where she was previously seated. Complainant was asked to do this repeatedly which embarrassed her.[7]

Complainant also narrated that Judge Barcillano thereafter asked her if she knew who he was. When, in her state of nervousness, she got his name wrong, Judge Barcillano asked for her name several times and even insulted her by saying "PO1 *ka lang*."[8]

Judge Barcillano, with Atty. Lozano, also allegedly harassed complainant about her firearm, including asking for the original of her Acknowledgment Receipt of Equipment (ARE), asking for the gun to check for the serial number and cocking it many times in front of her and other court employees. Complainant claimed that when Judge Barcillano was not initially able to find the serial number, he handed the firearm to Dennis Arjona, Acting Foreman of the Maintenance Division, who, after verifying that the serial numbers in the ARE and the gun match, returned the same to complainant.[9]

Later on, complainant recounted that Judge Barcillano called Leonardo, the husband of Executive Judge Amy Ana L. de Villa-Rosero (Executive Judge Rosero). When Leonardo approached, Judge Barcillano then said: "*Lokoloko ka pala eh, ano bang pinagmamalaki mo, ano? Magsusumbong ka?*" Leonardo reportedly replied: *"Tinawag mo po ako Sir, wala naman akong ginagawang masama.*" Atty. Lozano then tried to mediate when Judge Barcillano cursed Leonardo by saying "*Tarantado ka pala.*" Afterwards, Judge Barcillano left the building.[10]

---

[7] *Id.* at 9.

[8] *Id.*

[9] *Rollo*, pp. 9-10.

[10] *Id.* at 10.

In her *Sinumpaang Salaysay* dated July 7, 2014,[11] PO1 Batacan narrated that on July 4, 2014, she immediately left after greeting Judge Barcillano because she noticed that his eyes were red and he smelled of alcohol. Although she initially thought that complainant followed her out, she later on saw that Judge Barcillano was talking to complainant and cocking her gun. PO1 Batacan states that she tried to signal complainant to go but that the latter was unable to leave. She also claims she saw Judge Barcillano call for a man. Afterwards, he left the building and boarded his car. PO1 Batacan recounts that she immediately went to complainant who told her about Judge Barcillano's acts of shaming her and Leonardo.

For his part, Leonardo, in his *Sinumpaang Salaysay* dated August 5, 2014,[12] claimed that on the day of the incident, he was at the Hall of Justice waiting for his wife, Executive Judge Rosero, when Arjona called him and pointed to a small bag the latter was carrying which allegedly contains a firearm owned by Judge Barcillano. At the time, respondent Judge was standing by the security desk and cocking a gun. Judge Barcillano saw Leonardo and called him out using a hand sign. He greeted Judge Barcillano, who thereafter sat down and drank his coffee. Leonardo claims that Judge Barcillano suddenly said "*Lokoloko ka pala, eh*." When Leonardo replied "*Judge, tinawag mo po ako at wala naman akong ginagawang masama*," Judge Barcillano allegedly told him: "*May pinagmamalaki ito! Ano? Magsusumbong ka!*" Leonardo claims he tried to leave the place to avoid further altercations but that Judge Barcillano allegedly tried to punch him and said "*Tarantado ka pala!*" Fortunately, Arjona was able to hold respondent Judge back and convinced him to go home. Leonardo then noted that Judge Barcillano was drunk and could not walk straight, having apparently shared some drinks with court employees during working hours.[13]

---

[11] *Id.* at 11.

[12] *Id.* at 12-13.

[13] *Id.* at 12.

On November 5, 2014, the OCA referred the complaint-affidavit to Judge Barcillano for comment.[14]

In his Comment dated December 4, 2014,[15] Judge Barcillano essentially denied the allegations of grave misconduct and harassment made by complainant and her witnesses. He claims that the complaint is a result of his disagreement with Executive Judge Rosero, the Executive Judge, on some matters. For example, Judge Barcillano claims the complaint is Executive Judge Rosero's act of revenge against him for supposedly "castigating" her husband Leonardo inside the Hall of Justice. He also states that they have differences in opinion as to Executive Judge Rosero's act of allowing police officers to act as security personnel for the Hall of Justice.[16]

Judge Barcillano does not deny saying the words "PO1 *ka lang*?" to complainant. He claims, however, that the same was made on a "clarificatory manner and purpose."[17] According to Judge Barcillano, during the incident on July 4, 2014, complainant, as she recounts, switched her seat several times but denies that the switching was made on account of his orders. He claims that complainant "seemed to be uneasy x x x, cornered and obviously nervous, for reasons she knows for herself only."[18] Judge Barcillano also does not deny that he asked for complainant's gun and ARE to check if the same was properly booked as he was "security conscious" due to prior instances of firearm-related violence in the vicinity of the Hall of Justice.[19] He also denies that he was under the influence of alcohol at the time, as claimed by PO1 Batacan and Leonardo. Judge Barcillano avers that his eyes may have been reddish at that time but this is on account of the usual voluminous paperwork

---

[14] *Id.* at 43.

[15] *Id.* at 44-51.

[16] *Id.* at 44-47.

[17] *Id.* at 48.

[18] *Id.* at 48-49.

[19] *Id.* at 49.

in his office especially during Fridays (motion day). He also points out that: (1) nowhere in complainant's *Sinumpaang Salaysay* did she claim that he was drunk; (2) PO1 Batacan, who left immediately after greeting him, has no basis to say that he was drunk; and (3) Leonardo cannot believably claim that he saw Judge Barcillano drinking during office hours as he (Leonardo) himself claims that he arrived at the Hall of Justice at 3:50 PM, on or about the time of the incident complained of. The claim that he was drunk was thus "purely speculative and conjectural."[20]

Judge Barcillano likewise admits uttering the words "*Bakit mayabang ka?*" and "*Bakit paki-alamero ka*?" to Leonardo. Contrary to Leonardo's claim, however, Judge Barcillano denies ever having said the words "*Tarantado ka*" and the like. Taken in light of Leonardo's disrespectful and unsolicited declaration immediately prior, Judge Barcillano claims that the uttered words are not wrongful in themselves.[21]

In his *Sworn Explanation and Comment*,[22] Atty. Lozano essentially corroborated Judge Barcillano's narration of the events.

Due to the factual inconsistencies and contradictions between the opposing versions, the OCA recommended the conduct of a formal investigation.[23] Hence, in a Resolution dated March 2, 2016,[24] we resolved to re-docket the complaint as a regular administrative matter and refer the administrative matter to the Presiding Justice of the Court of Appeals, Manila for investigation, report, and recommendation.

On April 12, 2016, Associate Justice Normandie B. Pizarro was designated as the Investigating Justice.[25] After the conduct

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

[21] *Id.* at 50.

[22] *Id.* at 54-61.

[23] *Id.* at 70.

[24] *Id.* at 71-72.

[25] *Id.* at 74.

of hearing and the filing of the parties' respective memoranda, the Investigating Justice submitted his Report and Recommendation.[26] There, he found that Judge Barcillano conducted himself in an unbecoming manner, though not constitutive of grave misconduct, unbefitting of his stature as an esteemed officer of the court:

> The circumstances presented above demonstrate how Judge Barcillano, Jr. conducted himself below the standard of decorum expected of a judge. His actions, words, and line of questioning appear to have been done arrogantly and uncalled for. In the first place, he should not have repeatedly asked PO1 Marcelo to sit beside him, stand up, and sit again beside him if his purpose was not to embarrass her. His explanation that it was done by PO1 Marcelo in her own volition is simply unbelievable. Second, he should not have repeatedly asked PO1 Marcelo's name and said her rank ***"PO1 ka lang"*** because it was offensive and insulting. Third, he should not have held PO1 Marcelo's gun, much less cocked it in public because it was a deviation from protocol and/or from the norm of conduct.
>
> As a magistrate, Judge Barcillano, Jr. is expected to be an embodiment of professionalism, but the exact opposite was shown towards PO1 Marcelo. Rather than giving respect to a police officer who was on-duty at the time, Judge Barcillano, Jr. expressed mockery and a condescending attitude, or with conceited show of superiority.[27]

As to the altercation between Judge Barcillano and Leonardo, the Investigating Justice held that whatever the reason, Judge Barcillano's manner of dealing with complainant and Leonardo was unbefitting of his status as an esteemed officer of the court.[28] Further, he rejected the claim that the complaint was a retaliatory act instigated by Executive Judge Rosero, finding the same to be "immaterial if not speculative."[29] The Investigating Justice, however, refused to consider the allegations of drunkenness

---

[26] *Id.* at 187-202.

[27] *Id.* at 198.

[28] *Id.* at 196.

[29] *Id.* at 200.

(and holding of drinking sessions during office hours) against Judge Barcillano as he found the same to be without any concrete proof.[30] Noting that this was Judge Barcillano's first administrative charge, the Investigating Justice recommended that he be found guilty only of the offense of conduct unbecoming a judge, fined the amount of Ten Thousand Pesos (₱10,000.00) and admonished with a stern warning that a repetition of the same or similar act will be dealt with more severely.[31]

We ADOPT the Investigating Justice's findings and recommendation.

At the outset, we hold that the motives behind the filing of an administrative complaint are irrelevant.[32] That a complaint is alleged to be instigated or retaliatory is not a ground which will deter us from exercising our power to discipline officers of the court.

Judge Barcillano's dissatisfaction with Executive Judge Rosero's decision to post police officers in the Hall of Justice does not justify his acts of accosting complainant. While he may be security conscious, checking the booking of firearms is not part of his job. Further, his act of demanding for complainant's firearms and ARE in an aggressive manner effectively harassed the already nervous police officer. If, as Judge Barcillano claims, he strongly believed that the presence of the police officers violates existing rules, the appropriate course of action would have been to take up the issue with Executive Judge Rosero, not the police officers who are merely obeying orders.

We also agree with the Investigating Justice that regardless of the reason or motive behind the altercation, Judge Barcillano, being a magistrate, should have observed judicial temperament

---

[30] *Id.* at 200-201.

[31] *Id.* at 201-202.

[32] See *Court Administrator v. Sevillo*, A.M. No. P-95-1159, March 20, 1997, 270 SCRA 190.

which requires him to be always temperate, patient, and courteous, both in conduct and in language.

We nevertheless agree that the allegations of drunkenness and holding of drinking sessions during office hours were not duly proven. As correctly pointed out by Judge Barcillano, these allegations came from PO1 Batacan (who herself claims to have immediately left after greeting Judge Barcillano) and Leonardo (who arrived in the Hall of Justice at 3:50 PM). No similar allegation appeared in complainant's *Sinumpaang Salaysay*. We find this relevant considering that, under the circumstances thus far proven, it was complainant who was in a better position to observe Justice Barcillano's actual condition and demeanor. More, we note that in the transcript of the proceedings before the Investigating Justice, it was established that the PAO, where the drinking session was allegedly held, had glass walls with interiors visible even to those across the street. If indeed illegal drinking sessions were being held, it would have been easy for complainant to obtain positive testimony from witnesses about this very matter.

Under Sections 10(1) and 11(C) of Rule 140 of the Rules of Court, unbecoming conduct is classified as a light charge punishable by: (1) a fine of not less than one thousand pesos (₱1,000.00) but not exceeding ten thousand pesos (₱10,000.00), and/or (2) censure; (3) reprimand; (4) admonition with warning.

WHEREFORE, and in view of the foregoing, respondent Judge Ignacio C. Barcillano, Jr., Presiding Judge of Branch 13 of the RTC, Ligao City, Albay is found **GUILTY** of **CONDUCT UNBECOMING OF A JUDGE**. He is hereby **FINED** the amount of Ten Thousand Pesos (₱10,000.00) with a stern warning that a repetition of the same or any similar act will be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Reyes,* and *Tijam, JJ.*, concur.

SECOND DIVISION

[G.R. No. 189102. June 7, 2017]

CHIQUITA BRANDS, INC. and CHIQUITA BRANDS INTERNATIONAL, INC., *petitioners, vs.* **HON. GEORGE E. OMELIO, REGIONAL TRIAL COURT, DAVAO CITY, BRANCH 14, SHERIFF ROBERTO C. ESGUERRA, CECILIO G. ABENION, and 1,842 OTHER PLAINTIFFS IN CIVIL CASE NO. 95-45,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; PROHIBITS PARTIES FROM DIRECTLY RESORTING TO THE SUPREME COURT WHEN RELIEF MAY BE OBTAINED BEFORE THE LOWER COURTS; PURPOSE.—** The doctrine on hierarchy of courts prohibits "parties from directly resorting to this Court when relief may be obtained before the lower courts." This rule is founded upon judicial economy and practical considerations. On the one hand, it allows this Court to devote its time and attention to those matters falling within its exclusive jurisdiction. It also "prevent[s] the congestion of th[is] Court's dockets." On the other hand, it "ensure[s] that every level of the judiciary performs its designated roles in an effective and efficient manner." The doctrine on hierarchy of courts was designed to promote order and efficiency.

2. **ID.; ID.; ID.; DETERMINES THE PROPER VENUE OR CHOICE OF FORUM WHERE PETITIONS FOR *CERTIORARI*, PROHIBITION, AND MANDAMUS SHOULD BE FILED.—** Although this Court has the power to Issue extraordinary writs of certiorari, prohibition, and mandamus, it is by no means an exclusive power. "[I]t is shared [concurrently] with the Court of Appeals and the Regional Trial Courts." However, "[p]arties cannot randomly select the ... forum to which their [petitions] will be directed." The doctrine on hierarchy of courts determines the proper venue or choice of forum where petitions for certiorari, prohibition, and mandamus should be filed.

3. ID.; ID.; ID.; A PETITION DIRECTLY FILED BEFORE THE SUPREME COURT MAY BE DISMISSED IF RELIEF CAN BE OBTAINED FROM THE LOWER COURTS EXCEPT WHEN THERE ARE COMPELLING REASONS CLEARLY SET FORTH IN THE PETITION WHICH JUSTIFY THE DIRECT INVOCATION OF ITS ORIGINAL JURISDICTION.— Generally, this Court will dismiss petitions that are directly filed before it if relief can be obtained from the lower courts. Trial courts and the Court of Appeals are "in the best position to deal with causes in the first instance." They not only resolve questions of law but also determine facts based on the evidence presented before them. Nevertheless, a direct invocation of this Court's original jurisdiction may be justified "when there are compelling reasons clearly set forth in the petition." Immediate resort to this Court may be warranted: "(1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy." We may take cognizance of this case "in the interest of judicial economy and efficiency." The records of this case are sufficient for this Court to decide on the issues raised by the parties. Any further delay would unduly prejudice the parties.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; COMPROMISES; KINDS; A COMPROMISE VALIDLY ENTERED INTO HAS THE AUTHORITY AND EFFECT OF *RES JUDICATA* AS BETWEEN THE PARTIES.— A compromise is defined under the Civil Code as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." It may either be judicial or extrajudicial depending on its object or the purpose of the parties. A compromise is judicial if the parties' purpose is to terminate a suit already commenced. On the other hand, a compromise is extrajudicial if its object is to avoid litigation. In any case, a compromise validly entered into has

the authority and effect of *res judicata* as between the parties. To this extent, a judicial compromise and an extrajudicial compromise are no different from each other.

5. **ID.; ID.; ID.; ID.; JUDICIAL COMPROMISE; CONSIDERED BOTH A CONTRACT AND A JUDGMENT ON THE MERITS, AND IT MAY NEITHER BE DISTURBED NOR SET ASIDE EXCEPT IN CASES WHERE THERE IS FORGERY OR WHEN EITHER OF THE PARTIES' CONSENT HAS BEEN VITIATED.—** [U]nlike an extrajudicial compromise, a compromise that has received judicial imprimatur "becomes more than a mere contract." A judicial compromise is regarded as a "determination of the controversy" between the parties and "has the force and effect of [a final] judgment." In other words, it is both a contract and "a judgment on the merits." It may neither be disturbed nor set aside except in cases where there is forgery or when either of the parties' consent has been vitiated.

6. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE ON IMMUTABILITY OF JUDGMENTS; APPLIES TO A JUDGMENT ON COMPROMISE.—** The doctrine on immutability of judgments applies to compromise agreements approved by the courts in the same manner that it applies to judgments that have been rendered on the basis of a full-blown trial. Thus, a judgment on compromise that has attained finality cannot be "modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."

7. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; COMPROMISES; JUDGMENT ON COMPROMISE; MAY BE EXECUTED JUST LIKE ANY OTHER FINAL JUDGMENT AND THE WRIT OF EXECUTION MUST ESSENTIALLY CONFORM TO THE JUDGMENT'S TERMS.—** A judgment on compromise may be executed just like any other final judgment in the manner provided in the Rules of Court. The writ of execution derives its validity from the judgment it seeks to enforce and must essentially conform to the judgment's terms. It can neither be wider in scope nor exceed the judgment that gives it life. Otherwise, it has no validity. Thus, in issuing writs of execution,

courts must look at the terms of the judgment sought to be enforced.

8. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; MAY NOT BE STAYED OR SET ASIDE; EXCEPTIONS.—** Ordinarily, courts have the ministerial duty to grant the execution of a final judgment. The prevailing party may immediately move for execution of the judgment, and the issuance of the writ follows as a matter of course. Execution, being "the final stage of litigation ... [cannot] be frustrated." Nevertheless, the execution of a final judgment may be stayed or set aside in certain cases. "Courts have jurisdiction to entertain motions to quash previously issued writs of execution[.]" They "have the inherent power, for the advancement of justice, to correct the errors of their ministerial officers and to control their own processes." A writ of execution may be stayed or quashed when "facts and circumstances transpire" after judgment has been rendered that would make "execution impossible or unjust." x x x Another exception is when the writ of execution alters or varies the judgment. A writ of execution derives its validity from the judgment it seeks to enforce. Hence, it should not "vary terms of the judgment ... [or] go beyond its terms." Otherwise, the writ of execution is void. Courts can neither modify nor "impose terms different from the terms of a compromise agreement" that parties have entered in good faith. To do so would amount to grave abuse of discretion. Payment or satisfaction of the judgment debt also constitutes as a ground for the quashal of a writ of execution. x x x A writ of execution may also be set aside or quashed when it appears from the circumstances of the case that the writ "is defective in substance," "has been improvidently issued," issued without authority, or was "issued against the wrong party."

9. **ID.; EVIDENCE; JUDICIAL NOTICE; COURTS ARE NOT AUTHORIZED TO TAKE JUDICIAL NOTICE OF FOREIGN LAWS AND THEY SHALL BE PRESUMED TO BE THE SAME AS DOMESTIC LAW WHEN THEY ARE NOT PROPERLY PLEADED AND PROVED AS FACTS.—** Under the Compromise Agreement, the law that shall govern its interpretation is the law of Texas, United States. In this jurisdiction, courts are not authorized to "take judicial notice of foreign laws." The laws of a foreign country must "be properly pleaded and proved" as facts. Otherwise, under the doctrine

of processual presumption, foreign law shall be presumed to be the same as domestic law. Unfortunately, there is no evidence that Texan law has been proven as a fact. Hence, this Court is constrained to apply Philippine law.

10. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SOLIDARY LIABILITY; EXISTS WHEN THE OBLIGATION EXPRESSLY SO STATES, OR WHEN THE LAW OR THE NATURE OF THE OBLIGATION REQUIRES SOLIDARITY. —** Solidary liability under Philippine law is not to be inferred lightly but must be clearly expressed. Under Article 1207 of the Civil Code, there is solidary liability when "the obligation expressly so states, or when the law or the nature of the obligation requires solidarity." x x x [T]he Compromise Agreement did not impose solidary liability on the parties' subsidiaries, affiliates, controlled, and related entities, successors, and assigns but merely allowed them to benefit from its effects. Thus, respondent Judge Omelio gravely abused his discretion in holding that the petitioners' subsidiaries and affiliates were solidarily liable under the Compromise Agreement.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners.
Oswaldo A. Macadangdang for private respondent.

D E C I S I O N

LEONEN, *J.*:

Courts can neither amend nor modify the terms and conditions of a compromise validly entered into by the parties. A writ of execution that varies the respective obligations of the parties under a judicially approved compromise agreement is void.

Through this Petition for Certiorari[1] under Rule 65 of the Rules of Court, petitioners seek to prevent the execution of a judicially approved compromise agreement.

[1] *Rollo*, pp. 3-59.

In particular, petitioners assail the validity of the following writs and orders: (1) Writ of Execution dated April 23, 2003 (Writ of Execution); (2) Omnibus Order dated December 14, 2006, which were both issued by the Regional Trial Court of Panabo City;[2] (3) Order dated July 10, 2009; (4) Amended Order dated August 11, 2009; (5) Amended Writ of Execution dated July 31, 2009 (Amended Writ of Execution); and (6) Alias Writ of Execution dated August 12, 2009 (Alias Writ of Execution), which were rendered by the Regional Trial Court, Davao City, in Civil Case No. 95-45.[3]

On August 31, 1993,[4] thousands of banana plantation workers from over 14 countries[5] instituted class suits[6] for damages in the United States against 11 foreign corporations, namely: (1) Shell Oil Company; (2) Dow Chemical Company; (3) Occidental Chemical Corporation; (4) Standard Fruit Company; (5) Standard Fruit and Steamship Co.; (6) Dole Food Company, Inc.; (7) Dole Fresh Fruit Company; (8) Chiquita Brands, Inc.; (9) Chiquita Brands International, Inc.; (10) Del Monte Fresh Produce, N.A.; and (11) Del Monte Tropical Fruit Co.[7]

The banana plantation workers claimed to have been exposed to dibromochloropropane (DBCP) in the 1970s up to the 1990s while working in plantations that utilized it.[8] As a result, these workers suffered serious and permanent injuries to their reproductive systems.[9]

---

[2] The assailed orders were penned by Presiding Judge Jesus Granada of Branch 4, Regional Trial Court, Panabo City.

[3] *Rollo,* p. 7. The assailed orders were penned by Presiding Judge George E. Omelio of Branch 14, Regional Trial Court, Davao City.

[4] *Id.* at 95, Amended Joint Complaint.

[5] *Id.* at 10.

[6] *Id*. at 96. The actions were based on intentional tort and strict liability.

[7] *Id*. at 93-95, Amended Joint Complaint.

[8] *Id*. at 9, Petition.

[9] *Id*. at 9-10, Petition.

DBCP is a pesticide used against roundworms and threadworms that thrive on and damage tropical fruits such as bananas and pineapples.[10] It was first introduced in 1955 as a soil fumigant.[11] Early studies have shown that prolonged exposure to DBCP causes sterility.[12] DBCP was also found to have mutagenic properties.[13]

The United States courts dismissed the actions on the ground of *forum non conveniens*[14] and directed the claimants to file actions in their respective home countries.[15]

On May 3, 1996, 1,843[16] Filipino claimants filed a complaint for damages against the same foreign corporations before the Regional Trial Court in Panabo City, Davao del Norte, Philippines.[17] The case was raffled to Branch 4, presided by Judge Jesus L. Grageda (Judge Grageda), and was docketed as Civil Case No. 95-45.[18]

Before pre-trial,[19] Chiquita Brands, Inc., Chiquita Brands International, Inc. (collectively, Chiquita),[20] Dow Chemical Company (Dow), Occidental Chemical Corporation (Occidental),

---

[10] Eula Bingham and Celeste Monforton, *The pesticide DBCP and male infertility*, <http://www.eea.europa.eu/publications/late-lessons-2/late-lessons-chapters/late-lessons-ii-chapter-9> (last visited February 17, 2017).

[11] *Id*.

[12] *Id*.

[13] Babich H., Davis DL, and Stotzky G., *Dibromochloropropane (DBCP): a review,* <https://www.ncbi.nlm.nih.gov/pubmed/7015501> (last visited April 17, 2017).

[14] *Rollo,* p. 10.

[15] *Id*. at 227.

[16] *Id*. at 984.

[17] *Id*. at 9.

[18] *Id*. at 10.

[19] *Id*. at 984.

[20] *Id*. at 273-274.

Shell Oil Company (Shell), Del Monte Fresh Produce, N.A., and Del Monte Tropical Fruit Co. (collectively, Del Monte) entered into a worldwide settlement in the United States with all the banana plantation workers.[21] The parties executed a document denominated as the "Compromise Settlement, Indemnity, and Hold Harmless Agreement" (Compromise Agreement).[22] The Filipino claimants were represented by their counsel, Atty. Renato Ma. Callanta (Atty. Callanta).[23]

The Compromise Agreement provided, among others, that the settlement amount should be deposited in an escrow account, which should be administered by a mediator. After the claimants execute individual releases, the mediator shall give the checks representing the settlement amounts to the claimants' counsel, who shall then distribute the checks to each claimant:

COMPROMISE SETTLEMENT, INDEMNITY,
AND HOLD HARMLESS AGREEMENT

. . . .

7. Escrow

The Settling Defendants will pay the "Settlement Sum", which shall be the sum recited in a letter from counsel for the settling defendants to counsel for plaintiffs of even date herewith, and which shall remain confidential unless required to be disclosed for the reasons set forth in the same by Dow Chemical Company as part of its settlement with Plaintiffs. The Settling Defendants reserve the right to move the escrow account and funds contained therein to a different financial institution in Texas. *This payment shall be made within ten (10) business days after The Plaintiffs deliver to Counsel for Settling Defendants an executed original (or counterpart original) of this Compromise Settlement, Indemnity, and Hold Harmless Agreement signed individually by each of the Counsel for The Plaintiffs, or signed by one or more Counsel for The Plaintiffs on their behalf. Administration of this escrow account and all payments from it shall*

---

[21] *Id*. at 10.

[22] *Id*. at 261-274.

[23] *Id*. at 10.

be made by the Mediator, M.A. "Mickey" Mills ("the Mediator"). If Mr. Mills resigns as Mediator, becomes incapacitated, or dies, the Settling Defendants and Counsel for The Plaintiffs must agree upon his successor as Mediator. The parties agree to cooperate with Mr. Mills and, if agreed upon by the parties and if necessary to complete the settlement, to seek his appointment by an appropriate court as Special Master. The interest earned on this escrow account shall first be used to pay the Mediator's fees, costs and expenses (which expenses shall include reasonable expenses associated with travel, lodging and meals), and the costs of implementing this settlement including distribution expenses, bank charges and fees, and the like. Any interest remaining thereafter shall be owned by the party owning the principal. The Settling Defendants reserve the right to audit any and all payments from the escrow account at anytime. One year after the sum stated herein has been paid into the escrow account, any portion remaining, plus interest, shall be refunded to Settling Defendants.

. . . .

13. Releases

The individual releases are to be signed by The Plaintiffs and shall be enforceable in the courts of Plaintiffs' country of residence, in the United States, and in any other country in which their cause of action allegedly occurred. The form of this individual release shall be that of Exhibit G to the Dow agreement or such other form as is acceptable to the Settling Defendants. The check provided to each Plaintiff will contain release language and will incorporate the language on the full release to be signed separately by the Plaintiff. This release shall be notarized (or, if approved by the Mediator, be authorized in such a manner that the signed release shall be enforceable in the courts of Plaintiffs' country of residence, as well as in the United States) and signed by one of the Counsel for The Plaintiffs or an authorized representative thereof acceptable to Settling Defendants. The notary, or authorizing person, shall attest to the identity of the Plaintiff receiving the settlement payment. In countries which have a picture identification, the notary, or authorizing person, will examine the picture identification at the time the notarization or authorization is accomplished. In countries which do not have a picture identification, the notary, or authorizing person, will examine other appropriate documentary evidence of the identity of the person signing the release; provided, however, that the Mediator shall have authority in all instances to determine identification of The Plaintiffs.

. . . .

17. Payment From Escrow Funds

The amount placed in escrow shall be divided into a clients' account and an attorneys' account according to the terms of powers of attorney held by Counsel for The Plaintiffs. *The check for the amount payable to each Plaintiff (the "net client allocation") will be provided by the Mediator to Counsel for The Plaintiffs for their delivery to the Plaintiffs at the time the released [sic] is signed.* The amount owed to Counsel for The Plaintiffs from the attorneys' account, as a result of execution of releases by Plaintiffs, shall be paid by the Mediator to Counsel for The Plaintiffs on a sliding scale of the percentage of releases obtained and after receipt and determination by the Mediator that the executed releases received comply with the requirements of this Agreement. Counsel for Plaintiffs will use their best efforts to obtain releases from each of the Plaintiffs listed on Exhibits A and C. When the Mediator receives releases from at least fifty (50) percent of those Plaintiffs listed on Exhibit A, the Mediator may release to Counsel for Plaintiffs from the escrow account attorneys' fees and expenses proportionate to twenty-five (25) percent of the Plaintiffs having signed and returned valid releases. When the Mediator has received releases from at least eighty (80) percent of those Plaintiffs listed on Exhibit A, an additional twenty-five (25) percent of the fees and expenses allocated to Plaintiffs who have signed releases can be disbursed to Plaintiffs' Counsel. Upon receipt of releases from ninety-five (95) percent of the Plaintiffs/Claimants listed on Exhibit A, the Mediator may release all of the allocated fees and expenses proportionate to that percentage of Plaintiffs who have signed releases (e.g., ninety-five (95) percent signed releases results in ninety-five (95) percent of fees and expenses being disbursed to Plaintiffs' Counsel). All questions concerning the propriety and validity of each release and of the payment of the client's share to each individual client will be determined by the Mediator. At the request of the Settling Defendants, the Mediator will provide to Settling Defendants a breakdown of the amounts paid to the Plaintiffs by category.[24] (Emphasis supplied)

The Compromise Agreement also provided that the laws of Texas, United States should govern its interpretation.[25]

---

[24] *Id*. at 263-268.

[25] *Id*. at 269.

Consequently, Chiquita, Dow, Occidental, Shell, and Del Monte moved to dismiss Civil Case No. 95-45.[26] In support of its Motion for Partial Dismissal,[27] Chiquita alleged that all claimants, except James Bagas and Dante Bautista, executed quitclaims denominated as "Release in Full."[28] Chiquita attached five (5) quitclaims in its motion.[29]

The Regional Trial Court, Panabo City approved the Compromise Agreement by way of judgment on compromise. Accordingly, it dismissed Civil Case No. 95-45 in the Omnibus Order dated December 20, 2002:[30]

WHEREFORE, the court, hereby, *resolves*:

. . . .

Under No. 3, supra, the joint motion to dismiss and motion for partial judgment between the plaintiffs and defendants Dow and Occidental under the provisions of "[C]ompromise [S]ettlement, [I]ndemnity and [H]old [H]armless [A]greement(s)", embodied in annexes "A" and "B", which documents by reference are, hereby, incorporated, adopted, and made integral parts hereof, not being contrary to law, good morals, public order or policy are, hereby, *approved* by way of judgment on compromise and the causes of action of the plaintiffs in their joint amended complaint as well as the counter-claims of defendants Dow and Occidental are *dismissed*;

The motion to dismiss of the Del Monte defendant except as against sixteen (16) plaintiffs mentioned in par. 4 of motion as shown in Annex "A" of motion hereby incorporated, adopted and made integral part hereof, not being contrary to law, good morals, public order or policy is, hereby, *granted* and/or *approved* by way of judgment on compromise and plaintiffs' joint amended complaint, except as against

---

[26] *Id*. at 10-11, Petition.

[27] *Id*. at 279-282.

[28] *Id*. at 279.

[29] *Id*.

[30] *Id.* at 385-407. The Omnibus Order was penned by Presiding Judge Jesus L. Grageda.

the sixteen (16) plaintiffs mentioned above, as well as the Del Monte defendant's counter-claims against the plaintiffs in the premises are, *dismissed*[;]

The motion for partial dismissal of the Chiquita defendants of the above-entitled case against all the plaintiffs except plaintiffs James Bagas and Dante Bautista under a quit claim styled as "release in full," embodied in Annexes "1" to "5" of the motion hereby incorporated, adopted and made integral parts hereof, not being contrary to law, good morals, public order or policy is, hereby, *granted* and/or *approved* by way of judgment on compromise and plaintiffs['] joint amended complaint except as to plaintiffs James Bagas and Dante Bautista as well as the Chiquita defendants counterclaims against the plaintiffs in the premises are accordingly *dismissed*.

The foregoing parties are, hereby, enjoined to strictly abide by the terms and conditions of their respective settlements or compromise agreements.

The cross-claims of all the co-defendants in the above-entitled case between and among themselves, in effect leaving all the said co-defendants cross-claimants ("plaintiffs") and cross-defendants ("defendants") against each other shall continue to be taken cognizance of by the court.

As between and/or among the remaining parties, let the above-entitled case be set for pre-trial on *February 21, 2003 from 9:00 a.m. to 5:00 p.m.*

All other motions filed by the parties in relation to or in connection to the issues hereinabove resolved but which have been wittingly or unwittingly left unresolved are hereby considered moot and academic; likewise, all previous orders contrary to or not in accordance with the foregoing resolutions are hereby reconsidered, set aside and vacated.

SO ORDERED.[31] (Emphasis in the original)

Shortly after the dismissal of Civil Case No. 95-45, several claimants moved for the execution of the judgment on compromise.[32]

---

[31] *Id.* at 405-407.

[32] *Id*. at 11.

They were represented by Atty. Oswaldo A. Macadangdang (Atty. Macadangdang).[33]

Chiquita, Dow, Occidental, Shell, and Del Monte opposed the execution on the ground of mootness. They argued that they had already complied with their obligation under the Compromise Agreement by depositing the settlement amounts into an escrow account, which was administered by the designated mediator, Mr. M.A. "Mickey" Mills (Mr. Mills).[34] Hence, there was nothing left for the court to execute.[35]

In its Opposition to the Motion for Execution dated December 26, 2002,[36] Chiquita pointed out that the claimants' execution of individual quitclaims, denominated as "Release in Full," was an acknowledgement that they had received their respective share in the settlement amount.[37] The quitclaims proved that the claimants entered into a compromise agreement and that petitioners complied with its terms.[38]

The Regional Trial Court, Panabo City granted the Motion for Execution in the Order dated April 15, 2003[39] because there was no proof that the settlement amounts had been withdrawn and delivered to each individual claimant.[40] Although the parties admitted that the funds were already deposited in an escrow account, the Regional Trial Court held that this was insufficient to establish that Chiquita, Dow, Occidental, Shell, and Del Monte had fulfilled their obligation under the Compromise Agreement.[41]

---

[33] *Id*.

[34] *Id.* at 438.

[35] *Id*. at 12.

[36] *Id*. at 413-420.

[37] *Id*. at 415.

[38] *Id*. at 416.

[39] *Id*. at 421-440. The Order was penned by Presiding Judge Jesus L. Grageda.

[40] *Id*. at 439.

[41] *Id*. at 438-439, Order dated April 15, 2003.

Accordingly, a Writ of Execution[42] was issued on April 23, 2003:

NOW THEREFORE, you are hereby commanded to cause the execution of the Omnibus Order of this court dated December 20, 2002 specifically to collect or demand from each of the herein defendants the following amounts to wit:

1. Defendants Dow Chemical Company ("Dow") and Occidental Chemical Corporation ("Occidental") the amount of:

    a. [US]$22 million or such amount equivalent to the plaintiffs' claim in this case in accordance with their Compromise Settlement, Indemnity, and Hold Harmless Agreement (Annex "A"); and

    b. The amount of [US]$20 million or such amount equivalent to the plaintiffs' claim in this case in accordance with their Compromise Settlement, Indemnity, and Hold Harmless Agreement (Annex "B")

2. Defendants Del Monte Fresh Produce, N.A. and Del Monte Fresh Produce Company (formerly Del Monte Tropical Fruit, Co.) (collectively, the "Del Monte defendants") the amount of One Thousand Eight and No/100 Dollars ([US]$1,008.00) for each plaintiff in accordance with their Release in Full Agreement; [and]

3. Defendants Chiquita Brands, Inc. and Chiquita Brands, International, Inc. (collectively the "Chiquita Defendants") the amount of Two Thousand One Hundred Fifty-Seven and No/100 Dollars ([US]$2,157.00) for each plaintiff in accordance with their Release in Full Agreement.[43]

The claimants moved to amend the Writ of Execution to include the subsidiaries of Chiquita, Dow, Occidental, Shell, and Del Monte.[44]

On May 9, 2003, Chiquita filed a motion, praying to suspend the execution of judgment and to recall the Writ of Execution.[45]

---

[42] *Id*. at 74-79.

[43] *Id*. at 77-78.

[44] *Id*. at 62.

[45] *Id*. at 12.

On the other hand, Shell, Dow, and Occidental moved that they be allowed to photocopy, certify, and authenticate the release documents in the United States before a court-appointed commissioner or before Judge Grageda.[46] The release documents, which allegedly proved that the claims had been settled in full, were stored in the Law Offices of Baker Botts L.L.P. in Houston, Texas, United States.[47] The other defendant corporations, except Chiquita, "joined the motions of Shell, Dow, and Occidental."[48]

In the Omnibus Order[49] dated June 30, 2003, the Regional Trial Court, Panabo City granted the motions of Shell, Dow, and Occidental. Judge Grageda, pursuant to Rule 135, Section 6 of the Rules of Court,[50] ordered the reception of evidence at the Philippine Consulate in San Francisco, California, United States[51] and undertook to preside over the proceedings.[52] The Regional Trial Court, Panabo City suspended the implementation of the Writ of Execution and deferred action on the pending motions until the termination of the proceedings abroad.[53]

The claimants, through Atty. Macadangdang, objected to the reception of evidence in the United States.[54] They argued that

---

[46] *Id*.

[47] *Id*.

[48] *Id*.

[49] *Id*. at 441-455.

[50] *Id*. at 452-453. RULES OF COURT, Rule 135, Sec. 6 provides:
Section 6. *Means to carry jurisdiction into effect.* – When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

[51] *Id*. at 986.

[52] *Id*. at 13.

[53] *Id*. at 454.

[54] *Id*.

Judge Grageda was not authorized to receive evidence and hold hearings outside his territorial jurisdiction[55] without this Court's express permission.[56]

On August 27, 2003,[57] Judge Grageda received evidence at the Philippine Consulate Office in San Francisco, California, United States.[58] Despite due notice, the claimants did not participate.[59] The proceedings were held until September 29, 2003.[60]

In the Order dated September 29, 2003, Judge Grageda declared the photocopies of the release documents as "authentic and true copies of the original[s]."[61] The claimants moved for reconsideration arguing that the evidence was inadmissible because Judge Grageda was not authorized "to conduct the proceedings abroad."[62]

---

[55] *Id*. at 986.

[56] *Id*. at 456.

[57] *Id*. at 986.

[58] Judge Grageda's actions became the subject of an administrative complaint in *Maquiran v. Grageda,* 491 Phil. 205 (2005) [Per *J.* Austria-Martinez, Second Division]. Judge Grageda wrote to the Office of the Court Administrator requesting permission to travel to the United States to be on "court duty" in connection with Civil Case No. 95-45, which was pending before his sala. While Judge Grageda's request was pending, he wrote another letter addressed to the Office of the Court Administrator seeking permission to travel to the United States to visit his daughter. Judge Grageda's second request was granted. He was allowed to travel to the United States from August 26, 2003 until September 15, 2003. While he was in the United States, Judge Grageda conducted proceedings in the Philippine Consulate in San Francisco, California, from August 27, 2003 until September 29, 2003, despite lack of authority from this Court. Judge Grageda was held administratively liable and was suspended for six (6) months from service.

[59] *Id*. at 13.

[60] *Id*.

[61] *Id*.

[62] *Id*. at 14.

Subsequently, the claimants moved to inhibit Judge Grageda.[63] However, the motion was denied.[64]

In the Order dated February 4, 2004, the Regional Trial Court, Panabo City considered the documents obtained from the proceedings abroad "as part of the case record."[65] The claimants moved for reconsideration, but their motion was denied.[66]

Meanwhile, Dow and Occidental submitted copies of Special Powers of Attorney that the claimants executed in favor of their original counsel, Atty. Callanta, before the Regional Trial Court, Panabo City.[67] The Special Powers of Attorney were presented to prove Atty. Callanta's authority to enter into the Compromise Agreement on behalf of his clients and to establish that Dow and Occidental had complied with their obligations under the Compromise Agreement.[68]

The claimants opposed the presentation of the Special Powers of Attorney. They asked the Regional Trial Court of Panabo City to subpoena Atty. Callanta and the notary public, Atty. Zacarias Magnanao (Atty. Magnanao).[69] The claimants argued that the Special Powers of Attorney "were not properly notarized"[70] and were neither identified nor authenticated by Atty. Callanta.[71]

---

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.* at 14-15. It appears that the banana plantation workers were originally represented by Atty. Callanta and later on by Atty. Macadangdang. Records show that the Regional Trial Court of Panabo City granted Atty. Callanta's motion to be withdrawn as counsel due to health reasons.

[68] *Id.* at 15.

[69] *Id.*

[70] *Id.*

[71] *Id.* at 987.

Subsequently, Dow and Occidental moved to set the dates of hearing for the presentation of the claimants' evidence.[72] The claimants asserted that Dow and Occidental had the burden of proving compliance with the Compromise Agreement because they raised the affirmative defense of payment.[73]

On July 1, 2004, Dow and Occidental filed their formal offer of the evidence adduced during the proceedings in San Francisco, California, United States.[74]

On January 27, 2005 and January 28, 2005, Atty. Magnanao and Atty. Giselle Talion (Atty. Talion), the executive clerk of court of Panabo City and the custodian of Atty. Magnanao's notarial register,[75] were subpoenaed. Only Atty. Talion testified. After her direct examination, she failed to appear for cross-examination.[76]

Insisting that the proceedings in San Francisco, California, United States were void, the claimants moved to expunge the documents that were adduced by the defendant corporations. The claimants also moved for the implementation of the Writ of Execution.[77]

On December 14, 2006, the Regional Trial Court, Panabo City rendered an Omnibus Order[78] directing the implementation of the Writ of Execution against Chiquita and Del Monte. It reasoned that only Dow and Occidental used the evidence produced at the proceedings in San Francisco, California, United States.[79] In the same Order, the Regional Trial Court, Panabo

---

[72] *Id*. at 15.

[73] *Id*. at 988.

[74] *Id*. at 64.

[75] *Id*. at 15.

[76] *Id*. at 15-16.

[77] *Id*. at 16.

[78] *Id*. at 60-65.

[79] *Id*. at 64.

City denied the motion to include the defendant corporations' subsidiaries, considering that they were not impleaded in the case:[80]

> WHEREFORE, the notice of appearance as well as the motion for inhibition against the undersigned filed by Atty. Bartolome C. Amoguis are, hereby DENIED. The motion for reconsideration, and its supplements, of the order dated April 15, 2003 as well as the motions to quash or recall the writ of execution are GRANTED in favor of defendant Dow and Occidental. The motion to amend the said writ to include subsidiaries of the defendant corporations is, hereby, DENIED, considering that said subsidiaries have not been impleaded in the Joint-Amended Complaint in the above-entitled case. The suspension of the writ of execution is, hereby, LIFTED as against defendants Del Monte and Chiquita.
>
> SO ORDERED.[81]

Chiquita moved for reconsideration of the Omnibus Order dated December 14, 2006.[82] It manifested its intention to file its formal offer of evidence once the court declared that the claimants "had waived their right to present evidence . . . [for] their failure to present Atty. Talion for cross-examination[.]"[83]

On March 26, 2007 and March 27, 2007,[84] Chiquita took the deposition of its counsel in the United States, Mr. Samuel E. Stubbs, (Mr. Stubbs) at the Makati Shangri-la Hotel, Philippines.[85] The deposition was undertaken with the trial court's approval.[86] During the deposition, Mr. Stubbs identified and authenticated the documents which proved that Chiquita

---

[80] *Id.* at 65.

[81] *Id*. at 64-65.

[82] *Id*. at 17.

[83] *Id*.

[84] *Id*.

[85] *Id*. at 605.

[86] *Id*. at 17.

complied with the terms of the Compromise Agreement.[87] He also answered the claimants' written interrogatories.[88]

During the hearing of Civil Case No. 95-45, the claimants picketed outside the courtroom.[89] They were led by a certain Edgardo O. Maquiran.[90] The claimants accused Judge Grageda as a corrupt official who delayed the execution of the judicially approved Compromise Agreement.[91] The claimants allegedly harassed and intimidated Judge Grageda "by shouting insults and invectives at him when he went to and left the courtroom."[92] Judge Grageda was forced to inhibit from hearing Civil Case No. 95-45.[93]

Chiquita requested for a change of venue from Panabo City to Davao City due to security issues.[94] This Court granted the request and ordered the transfer from Panabo City to Davao City[95] of Civil Case No. 95-45. The case was raffled to Branch 14, Regional Trial Court, Davao City, presided by Judge George E. Omelio (Judge Omelio).[96]

The claimants, through Atty. Macadangdang, filed a Manifestation dated November 8, 2008 containing a list of the pending incidents in Civil Case No. 95-45.[97] The Regional Trial Court, Davao City submitted the pending incidents for resolution.[98]

---

[87] *Id*.

[88] *Id*.

[89] *Id*.

[90] *Id*. at 481. Maquiran is the chairman of the Banned Chemical Research and Information Center, Inc. (BCRIC).

[91] *Id*. at 17.

[92] *Id*. at 18.

[93] *Id.*

[94] *Id*.

[95] *Id*.

[96] *Id*.

[97] *Id*. at 19.

[98] *Id*.

In December 2008, Shell moved to relocate the case records after its counsel discovered that the sealed boxes containing the case records were merely stacked "on the corridors of the [j]ustice [h]all, exposed and unsecured."[99]

During the hearing on Shell's motion, presiding Judge Omelio permitted Atty. Macadangdang "to argue the merits of the pending incidents" of the case.[100] In the course of the proceedings, presiding Judge Omelio allegedly stated that: (1) the proceedings for the reception of evidence held in the Philippine Consulate in San Francisco, California, United States, were void for which Judge Grageda was disciplined;[101] (2) the settlement amount should be given directly to the claimants instead of depositing it in a fund;[102] and (3) the defendant corporations should pay the claimants anew.[103]

Suspecting that presiding Judge Omelio had prejudged the case, Shell moved for his inhibition.[104] However, before Shell's motion could be heard, the Regional Trial Court, Davao City issued a Joint Order[105] dated January 7, 2009 denying it.[106] Shell moved for reconsideration. Chiquita also moved to inhibit Judge Omelio. Both motions were denied.[107]

In the Order[108] dated July 10, 2009, the Regional Trial Court, Davao City denied Chiquita's Motion for Partial Reconsideration of the Omnibus Order[109] dated December 14, 2006, which directed

---

[99] *Id*.

[100] *Id*. at 19-21.

[101] *Id*. at 20.

[102] *Id*.

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

[104] Id. at 21.

[105] *Id*. at 502-503.

[106] *Id*. at 21.

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

[108] *Id*. at 66-68.

[109] *Id*. at 22.

the implementation of the Writ of Execution.[110] In the same Order, the trial court included Chiquita's subsidiaries and affiliates in the Writ of Execution:

WHEREFORE, and in view of all the foregoing, this Court hereby resolves as follows:

a) As to Chiquita defendants' Motion for Partial Reconsideration of the 14 December 2006 Omnibus Order is DENIED; and

b) As to the Writ of Execution dated April 23, 2003, the same is hereby amended to include all subsidiaries, affiliates, controlled and related entities, successors, [and] assigns pursuant to the common provision, Clause 25 of the 1997 Compromise Agreement[,] which are doing business in the Philippines and/or registered with the Securities and Exchange Commission.

SO ORDERED.[111]

The Regional Trial Court, Davao City reasoned that Chiquita never filed its formal offer of evidence.[112] Hence, the trial court had no other choice but to issue another writ of execution.[113] The Amended Writ of Execution was issued on July 31, 2009.[114]

Acting on an ex-parte motion of the claimants, the Regional Trial Court, Davao City issued an Amended Order[115] dated August 11, 2009. The Amended Order modified the Writ of Execution under the 25th Clause[116] of the Compromise Agreement[117] to

---

[110] *Id*. at 60-65.

[111] *Id*. at 67.

[112] *Id*. at 66.

[113] *Id*. at 67.

[114] *Id*. at 22.

[115] *Id*. at 69-73.

[116] The Amended Order dated August 11, 2009 incorrectly cited the 28th Clause.

[117] *Rollo,* p. 270. Clause 25 of the Compromise Agreement states:

25. Affiliates and Successors

include all the "subsidiaries, affiliates, controlled and related entities, successors, [and] assigns" of Dow,[118] Shell,[119] Occidental,[120] Chiquita,[121] and Del Monte,[122] which are doing business in the Philippines.[123]

In the same Order, the Regional Trial Court, Davao City imposed solidary liability on all the subsidiaries, affiliates, controlled and related entities, successors, and assigns of Dow, Shell, Occidental, Chiquita, and Del Monte.[124] Accordingly, the Regional Trial Court, Davao City issued the Alias Writ of Execution[125] on August 12, 2009.

On August 26, 2009, Chiquita instituted before this Court a Petition for Certiorari and Prohibition[126] with an application for the issuance of a temporary restraining order and writ of preliminary prohibitory or mandatory injunction.[127]

Petitioners assail the validity of the following orders and writs on the ground that they were issued with grave abuse of discretion: (1) Writ of Execution; (2) Omnibus Order dated December 14, 2006, which directed the implementation of the Writ of Execution as against petitioners; (3) Order dated July

---

This Agreement and the rights, obligations, and covenants contained herein shall inure to the benefit of and be binding upon The Plaintiffs and Settling Defendants and their respective subsidiaries, affiliates, controlled and related entities, successors, and assigns.

[118] *Id*. at 69-70.

[119] *Id*. at 70.

[120] *Id*.

[121] *Id*. at 71.

[122] *Id*. at 72.

[123] *Id*. at 71.

[124] *Id.*

[125] *Id.* at 86-90.

[126] *Id*. at 3-59. The Petition was filed under Rule 65 of the Rules of Court.

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

10, 2009, which denied petitioners' Motion for Partial Reconsideration of the Omnibus Order dated December 14, 2006; (4) Amended Order dated August 11, 2009, which modified the terms of the Writ of Execution to include petitioners' subsidiaries, affiliates, controlled and related entities, successors, and assigns doing business in the Philippines; (5) Amended Writ of Execution; and (6) Alias Writ of Execution.[128]

The first two (2) assailed orders were issued by Judge Grageda of Branch 4, Regional Trial Court, Panabo City.[129] The rest were issued by presiding Judge Omelio of Branch 14, Regional Trial Court, Davao City.[130]

In the Resolution dated September 23, 2009, this Court directed the respondents to file a comment on the petition for certiorari.[131]

Meanwhile, on October 8, 2009, petitioners filed an Urgent Motion to Resolve the Application for Temporary Restraining Order.[132] They filed a Supplemental Petition[133] on October 19, 2009. Petitioners alleged that respondents-claimants "attempt[ed] to trifle with court processes"[134] by filing an Ex-Parte Motion before the Regional Trial Court, Davao City. The Ex-Parte Motion prayed that Deputy Sheriff Amos Camporedondo of Branch 14, Regional Trial Court, Panabo City be deputized to assist respondent Sheriff Roberto C. Esguerra (Sheriff Esguerra) in implementing the assailed orders and writs.[135] Despite the absence of notice and hearing,

---

[128] *Id*. at 7.

[129] *Id*. at 74-79 and 60-65.

[130] *Id*. at 66-68, 69-73, 80-85, and 86-90.

[131] *Id*. at 843A-843B.

[132] *Id.* at 854-860.

[133] *Id*. at 866-878.

[134] *Id.* at 856.

[135] *Id.* at 855.

the Regional Trial Court, Davao City granted the Ex-Parte Motion in an Order[136] dated August 19, 2009.

In support of their prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, petitioners argued that the Petition for Certiorari pending before this Court would be rendered moot and academic by the implementation of the assailed orders and writs.[137]

On December 3, 2009, respondents filed a Comment[138] on the petition for certiorari.

On December 16, 2009,[139] this Court issued a Temporary Restraining Order[140] against respondent Judge Omelio, respondent Sheriff Esguerra, and all other persons acting on their behalf enjoining them from implementing and enforcing the assailed orders and writs.[141] Petitioners were ordered to post a 2 million bond.[142]

On January 5, 2010, petitioners filed a Motion for Leave to Admit Reply.[143] They posted the ₱2 million bond on January 11, 2010.[144]

In a Resolution dated February 17, 2010, this Court granted petitioners' motion for leave to admit reply to the comment on the petition for certiorari and noted the Reply dated January 5, 2010.[145]

---

[136] *Id*. at 867.

[137] *Id*. at 871-872.

[138] *Id*. at 980-1012, Comment on the Petition for *Certiorari* (with Motion to Dismiss).

[139] *Id*. at 972-973.

[140] *Id.* at 974-976.

[141] *Id*. at 975.

[142] *Id*.

[143] *Id*. at 1019-1021.

[144] *Id*. at 1043-1044.

[145] *Id*. at 1054-1055.

On June 7, 2011, petitioners manifested[146] that the Court of Appeals rendered a Decision dated March 15, 2011[147] in the consolidated petitions for certiorari[148] filed against respondents regarding the assailed orders and writs.[149]

Subsequently, respondents sought for leave before this Court to file a rejoinder to petitioners' reply to the comment on the petition[150] to which petitioners filed an Opposition.[151]

In the present case, petitioners argue that the Writ of Execution should never have been issued because the dismissal of Civil Case No. 95-45 in the Omnibus Order dated December 20, 2002 was based on the trial court's approval of the quitclaims executed by the claimants.[152] Hence, "there was nothing left" for the trial court to execute.[153] Consequently, the Omnibus Order dated December 14, 2006, which directed the implementation of the Writ of Execution, is likewise a patent nullity.[154]

---

[146] *Id*. at 1067-1073, Manifestation.

[147] *Id.* at 1077-1236. The Decision, docketed as CA-G.R. SP No. 03234-MIN, was penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren of the Special Former 23rd Division, Court of Appeals, Cagayan de Oro City. The Court of Appeals found that Judge Omelio committed grave abuse of discretion in issuing the assailed orders and writs.

[148] The Consolidated Petitions for *Certiorari* were filed by Dow Chemical Co., Occidental Chemical Co., Dow Agrosciences, B.V. Philippine Branch, Dow Chemical Pacific Ltd. Philippine Branch, Shell Oil Co., Union Carbide Philippines (Far East), Inc., Del Monte Fresh Produce N.A., Inc., Del Monte Fresh Produce Co., Shell Philippines Exploration B.V., Shell Gas Eastern, Inc., The Shell Co. of the Philippines, Ltd., and Pilipinas Shell Petroleum Corporation.

[149] *Rollo,* p. 1067.

[150] *Id*. at 1298-1320, Motion for Leave to File and Admit Rejoinder (to Reply dated 29 December 2009).

[151] *Id*. at 1322-1326.

[152] *Id*. at 29-30.

[153] *Id*. at 30.

[154] *Id.* at 33.

Petitioners further assert that respondent Judge Omelio issued the assailed orders and writs "in an arbitrary and despotic manner by reason of passion and hostility" against them and their co-defendants in Civil Case No. 95-45.[155] They claim that he "consistently displayed bias and partiality in favor of [the claimants]."[156] For instance, he allegedly stated in open court that the proceedings at the Philippine Consulate in San Francisco, California, United States were void[157] despite the absence of any order or decision nullifying the proceedings.[158] The evidence adduced during the proceedings in San Francisco, California, United States should have convinced respondent Judge Omelio to quash the Writ of Execution. Instead, he concluded, without reviewing the case records,[159] that there was no evidence to prove that petitioners complied with the Compromise Agreement.[160]

According to petitioners, respondent Judge Omelio committed grave abuse of discretion[161] and evaded his duties[162] by ignoring the records of Civil Case No. 95-45.[163]

Had Judge Omelio reviewed the case records, he would have discovered that petitioners' evidence was not limited to the documents produced at the Philippine Consulate in San Francisco, California, United States but included the deposition of Mr. Stubbs.[164] Hence, assuming that the proceedings conducted

---

[155] *Id*. at 24.

[156] *Id*. at 25.

[157] *Id*. at 28.

[158] *Id*. at 36.

[159] *Id.* at 25.

[160] *Id*. at 26.

[161] *Id*. at 37.

[162] *Id*. at 29.

[163] *Id*. at 25-26.

[164] *Id*. at 27.

abroad were invalid,[165] there was still evidence on record to support petitioners' claim that they fully complied with the terms of the Compromise Agreement[166] by depositing the settlement amount in an escrow account administered by Mr. Mills.[167]

Judge Omelio would have also discovered that petitioners' delay in filing their formal offer of evidence was justified.[168] According to petitioners, respondents-claimants were "still in the process of presenting evidence in support of their motion for execution."[169] Respondents-claimants had just completed the direct examination of their witness, Atty. Talion. However, Atty. Talion failed to appear for cross-examination.[170] Petitioners deemed it best to make a formal offer of evidence once the trial court declared that the claimants waived their right to present evidence to ensure an orderly proceeding.[171]

Petitioners further argue that the trial courts gravely abused their discretion in ordering them to directly pay each of the claimants anew[172] and in imposing solidary liability on their "subsidiaries, affiliates, controlled and related entities, successors, [and] assigns."[173] Petitioners' obligation under the Compromise Agreement consisted of depositing the settlement amount in an escrow fund.[174] They were not required to release and to directly give the settlement amount to each claimant

---

[165] *Id*. at 36.

[166] *Id*. at 37.

[167] *Id*. at 34.

[168] *Id*. at 26.

[169] *Id*. at 1027.

[170] *Id.* at 1027-1028.

[171] *Id*. at 1028-1029.

[172] *Id*. at 39.

[173] *Id*. at 39-40.

[174] *Id*. at 38.

since this duty was delegated to the mediator, Mr. Mills.[175] Therefore, it is unnecessary to prove that each claimant has received his or her respective share in the settlement amount to determine whether the Compromise Agreement has been satisfied.[176]

In addition, petitioners' subsidiaries and affiliates cannot be held liable under Clause 25 of the Compromise Agreement.[177] Their subsidiaries and affiliates were not privy to the Compromise Agreement.[178]

Lastly, and for these reasons, petitioners assert that respondent Judge Omelio should inhibit himself from hearing Civil Case No. 95-45.[179]

On the other hand, respondents argue that petitioners failed to observe the doctrine on hierarchy of courts by directly filing the petition for certiorari before this Court.[180] While there may be exceptions to the rule on hierarchy of courts, as when the assailed orders are patently null or when there are special and important reasons, none of these is present in this case.[181]

Respondents point out that the evidence relied upon by petitioners originated from the proceeding conducted in San Francisco, California, United States. However, they insist that the proceedings were void. Hence, petitioners have no evidence to prove that they complied with the Compromise Agreement.[182]

---

[175] *Id*. at 39.

[176] *Id*. at 35.

[177] *Id.* at 40. Clause 25 of the Compromise Agreement provides:

25. Affiliates and Successors. This Agreement and the rights, obligations, and covenants contained herein shall inure to the benefit of and be binding upon The Plaintiffs and Settling Defendants and their respective subsidiaries, affiliates, controlled and related entities, successors, and assigns.

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

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

[180] *Id*. at 995.

[181] *Id*. at 995.

[182] *Id*.

Assuming that the proceedings conducted abroad were valid, petitioners failed to make a formal offer of evidence.[183] Respondent Judge Omelio had no other choice but "to disregard petitioners' evidence" although it already formed part of the case records.[184] Respondents find it peculiar that petitioners had to wait for the trial court to declare that respondents-claimants waived their right in presenting evidence before making their formal offer of evidence.[185]

Respondents further assert that the Regional Trial Court, Davao City did not err in holding petitioners' subsidiaries and affiliates solidarily liable because they were bound by Clause 25 of the Compromise Agreement.[186] Furthermore, petitioners used the corporate fiction as a vehicle to evade an existing obligation.[187]

Finally, "there is no valid reason for [respondent] Judge Omelio to inhibit himself from further hearing Civil Case No. 95-45."[188] Mere suspicion of bias is insufficient to prove personal bias or prejudice on the part of a judge.[189]

This case presents the following issues for this Court's resolution:

First, whether this case falls under the exceptions to the doctrine on hierarchy of courts;

Second, whether respondent court committed "grave abuse of discretion amounting to lack or excess of its jurisdiction in issuing the assailed [o]rders and [w]rits";[190] and

---

[183] *Id*.

[184] *Id*.

[185] *Id*. at 998.

[186] *Id*. at 1003.

[187] *Id*. at 1004.

[188] *Id*. at 1006.

[189] *Id*. at 1006-1007.

[190] *Id*. at 23.

Finally, whether Judge George E. Omelio of Branch 14, Regional Trial Court, Davao City should inhibit himself from hearing Civil Case No. 95-45.[191]

I

The doctrine on hierarchy of courts prohibits "parties from directly resorting to this Court when relief may be obtained before the lower courts."[192] This rule is founded upon judicial economy and practical considerations. On the one hand, it allows this Court to devote its time and attention to those matters falling within its exclusive jurisdiction.[193] It also "prevent[s] the congestion of th[is] Court's dockets."[194] On the other hand, it "ensure[s] that every level of the judiciary performs its designated roles in an effective and efficient manner."[195] The doctrine on hierarchy of courts was designed to promote order and efficiency.

Although this Court has the power to issue extraordinary writs of certiorari, prohibition, and mandamus, it is by no means an exclusive power.[196] "[I]t is shared [concurrently] with the Court of Appeals and the Regional Trial Courts."[197] However, "[p]arties cannot randomly select the . . . forum to which their [petitions] will be directed."[198] The doctrine on hierarchy of courts determines the proper venue or choice of forum where

---

[191] *Id*.

[192] *Aala, et al. v. Uy, et al.* G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/202781.pdf> 13 [Per *J*. Leonen, Second Division].

[193] *Id*.

[194] *Id*.

[195] *Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301, 329 (2015) [Per *J*. Leonen, *En Banc*].

[196] *Aala, et al. v. Uy, et al.* G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/202781.pdf> 13 [Per *J*. Leonen, Second Division].

[197] *Id*.

[198] *Id*.

petitions for certiorari, prohibition, and mandamus should be filed.[199]

Generally, this Court will dismiss petitions that are directly filed before it if relief can be obtained from the lower courts. Trial courts and the Court of Appeals are "in the best position to deal with causes in the first instance."[200] They not only resolve questions of law but also determine facts based on the evidence presented before them.[201]

Nevertheless, a direct invocation of this Court's original jurisdiction may be justified "when there are compelling reasons clearly set forth in the petition."[202] Immediate resort to this Court may be warranted:

> (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[203]

We may take cognizance of this case "in the interest of judicial economy and efficiency."[204] The records of this case are sufficient

---

[199] *Id*.

[200] *Id*. at 14.

[201] *Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301, 329 (2015) [Per *J*. Leonen, *En Banc*].

[202] *Aala, et al. v. Uy, et al.* G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/202781.pdf> 15 [Per *J*. Leonen, Second Division] citing *Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

[203] *Id*.

[204] See *Cathay Metal Corp. v. Laguna West Multi-Purpose Cooperative, Inc.,* 738 Phil. 37, 63 (2014) [Per *J*. Leonen, Third Division].

for this Court to decide on the issues raised by the parties.[205] Any further delay would unduly prejudice the parties.

II

A compromise is defined under the Civil Code as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[206] It may either be judicial or extrajudicial depending on its object or the purpose of the parties.[207] A compromise is judicial if the parties' purpose is to terminate a suit already commenced.[208] On the other hand, a compromise is extrajudicial if its object is to avoid litigation.[209]

In any case, a compromise validly entered into has the authority and effect of *res judicata* as between the parties.[210] To this extent, a judicial compromise and an extrajudicial compromise are no different from each other.

However, unlike an extrajudicial compromise, a compromise that has received judicial imprimatur "becomes more than a mere contract."[211] A judicial compromise is regarded as a "determination of the controversy" between the parties and "has the force and effect of [a final] judgment."[212] In other words,

---

[205] *Id*.

[206] CIVIL CODE, Art. 2028.

[207] *Yboleon v. Sison*, 59 Phil. 281, 290 (1933) [Per *J.* Villa-Real, Second Division].

[208] *Id*.

[209] *Id*.

[210] *Id*. CIVIL CODE, Art. 2037 provides:

Article 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

[211] *Spouses Martir v. Spouses Verano*, 529 Phil. 120, 125 (2006) [Per *J.* Ynares-Santiago, First Division].

[212] *Id*.

it is both a contract and "a judgment on the merits."[213] It may neither be disturbed nor set aside except in cases where there is forgery or when either of the parties' consent has been vitiated.[214]

The doctrine on immutability of judgments applies to compromise agreements approved by the courts in the same manner that it applies to judgments that have been rendered on the basis of a full-blown trial.[215] Thus, a judgment on compromise that has attained finality cannot be "modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[216]

A judgment on compromise may be executed just like any other final judgment[217] in the manner provided in the Rules of Court.[218] The writ of execution derives its validity from the judgment it seeks to enforce and must essentially conform to the judgment's terms.[219] It can neither be wider in scope nor exceed the judgment that gives it life.[220] Otherwise, it has no

---

[213] *Gadrinab v. Salamanca,* 736 Phil. 279, 293 (2014) [Per *J.* Leonen, Third Division].

[214] *Spouses Martir v. Spouses Verano*, 529 Phil. 120, 125-126 (2006) [Per *J.* Ynares-Santiago, First Division].

[215] *Gadrinab v. Salamanca,* 736 Phil. 279, 293 (2014) [Per *J.* Leonen, Third Division].

[216] *FGU Insurance Corp. v. Regional Trial Court of Makati City, Branch 66*, 659 Phil. 117, 123 (2011) [Per *J.* Mendoza, Second Division].

[217] *Id. See* CIVIL CODE, Art. 2037 provides:

Article 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

[218] *Yboleon v. Sison*, 59 Phil. 281, 290 (1933) [Per *J.* Villa-Real, Second Division].

[219] *Bank of the Philippine Islands v. Green,* 48 Phil. 284, 287 (1925) [Per *J.* Malcolm, *En Banc*].

[220] *Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corp.,* 526 Phil. 761, 778-779 (2006) [Per *J.* Carpio Morales, Third Division].

validity. Thus, in issuing writs of execution, courts must look at the terms of the judgment sought to be enforced.

In *Bank of the Philippine Islands v. Green,*[221] the writ of execution ordering the sale of the judgment debtor's mortgaged property[222] was declared void because the judgment sought to be executed was for a sum of money.[223] In *Philippine American Accident Insurance Co., Inc. v. Flores*,[224] this Court set aside the writ of execution issued by the trial court which ordered the payment of compounded interest because the judgment sought to be enforced ordered the payment of simple interest only.[225]

The Writ of Execution ordering the collection of the settlement amount directly from petitioners and its co-defendants in Civil Case No. 95-45 is void.

Under the judicially approved Compromise Agreement, petitioners are obliged to deposit the settlement amount in escrow within 10 business days after they receive a signed Compromise Agreement from the counsel of the claimants.[226]

There was nothing in the Compromise Agreement that required petitioners to ensure the distribution of the settlement amount to each claimant. Petitioners' obligation under the Compromise Agreement was limited to depositing the settlement amount in escrow.[227] On the other hand, the actual distribution of the settlement amounts was delegated to the chosen mediator, Mr. Mills.[228] To require proof that the settlement amounts have

---

[221] 48 Phil. 284 (1925) [Per *J*. Malcolm, *En Banc*].

[222] *Id*. at 285-286.

[223] *Id*. at 287-288.

[224] 186 Phil. 563, 565–566 (1980) [Per *J*. Abad, Second Division].

[225] *Id.*

[226] *Rollo*, pp. 263-264.

[227] *Id*.

[228] *Id*. at 268.

been withdrawn and delivered to each claimant[229] would enlarge the obligation of petitioners under the Compromise Agreement.

Consequently, the Omnibus Order dated December 14, 2006, which directed the implementation of the Writ of Execution, is likewise void.

Ordinarily, courts have the ministerial duty to grant the execution of a final judgment.[230] The prevailing party may immediately move for execution of the judgment, and the issuance of the writ follows as a matter of course.[231] Execution, being "the final stage of litigation . . . [cannot] be frustrated."[232]

Nevertheless, the execution of a final judgment may be stayed or set aside in certain cases. "Courts have jurisdiction to entertain motions to quash previously issued writs of execution[.]"[233] They "have the inherent power, for the advancement of justice, to correct the errors of their ministerial officers and to control their own processes."[234]

A writ of execution may be stayed or quashed when "facts and circumstances transpire" after judgment has been rendered that would make "execution impossible or unjust."[235]

In *Lee v. De Guzman*,[236] the trial court issued a writ of execution directing a car manufacturer to deliver a 1983 Toyota

---

[229] *Id*. at 439.

[230] *Far Eastern Realty Investment, Inc. v. Court of Industrial Relations*, 243 Phil. 281, 284 (1988) [Per *J.* Padilla, Second Division].

[231] *Pamintuan v. Muñoz*, 131 Phil. 213, 216 (1968) [Per *J.* Bengzon, *En Banc*].

[232] *Torres v. National Labor Relations Commission,* 386 Phil. 513, 520 (2000) [Per *J.* Pardo, First Division].

[233] *Sandico, Sr. v. Piguing,* 149 Phil. 422, 434 (1971) [Per *J.* Castro, *En Banc*].

[234] *Id*.

[235] *Ocampo v. Sanchez,* 97 Phil. 472, 479-480 (1955) [Per *J.* Jugo, First Division].

[236] 265 Phil. 289 (1990) [Per *J.* Paras, Second Division].

Corolla Liftback to a buyer.[237] The manufacturer moved to quash the writ.[238] Instead of ordering the manufacturer to deliver the car, this Court ordered the manufacturer to pay damages.[239] The cessation of the manufacturer's business operations rendered compliance with the writ of execution impossible.[240]

Another exception is when the writ of execution alters or varies the judgment.[241] A writ of execution derives its validity from the judgment it seeks to enforce. Hence, it should not "vary terms of the judgment . . . [or] go beyond its terms."[242] Otherwise, the writ of execution is void.[243] Courts can neither modify nor "impose terms different from the terms of a compromise agreement" that parties have entered in good faith. To do so would amount to grave abuse of discretion.[244]

Payment or satisfaction of the judgment debt also constitutes as a ground for the quashal of a writ of execution.[245] In *Sandico, Sr. v. Piguing*,[246] although the sum given by the debtors was less than the amount of the judgment debt, the creditors accepted the reduced amount as "full satisfaction of the money

---

[237] *Id*. at 290-292.

[238] *Id*. at 292.

[239] *Id*. at 294-295.

[240] Id. at 294.

[241] *Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corp.,* 526 Phil. 761, 778 (2006) [Per *J.* Carpio Morales, Third Division].

[242] *Id*. at 779.

[243] *Id*.

[244] *Gadrinab v. Salamanca,* 736 Phil. 279, 295 (2014) [Per *J.* Leonen, Third Division].

[245] *Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corp.,* 526 Phil. 761, 778 (2006) [Per *J.* Carpio Morales, Third Division].

[246] 149 Phil. 422 (1971) [Per *J.* Castro, *En Banc*].

judgment."[247] This justified the issuance of an order recalling the writ of execution.[248]

A writ of execution may also be set aside or quashed when it appears from the circumstances of the case that the writ "is defective in substance,"[249] "has been improvidently issued,"[250] issued without authority,[251] or was "issued against the wrong party."[252]

The party assailing the propriety of the issuance of the writ of execution must adduce sufficient evidence to support his or her motion.[253] This may consist of affidavits and other documents.[254]

On the other hand, in resolving whether execution should be suspended or whether a writ of execution should be quashed, courts should be guided by the same principle in the execution of final judgments. Certainly, they may require parties to present evidence.

In this case, petitioners cannot rely on the five (5) quitclaims[255] for the trial court to quash or recall the writ of execution. The quitclaims are insufficient to establish that petitioners complied with their obligation under the Compromise Agreement. They

---

[247] *Id*. at 434-435.

[248] *Id*.

[249] *Id.* at 434.

[250] *Id.*

[251] *Id*.

[252] *Id.*

[253] RULES OF COURT, Rule 15, Sec. 3 provides:

Section 3. *Contents.* – A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers.

[254] RULES OF COURT, Rule 15, Sec. 3.

[255] The quitclaims were attached in petitioners' Motion for Partial Dismissal of Civil Case No. 95-45.

only prove that five (5) claimants received their respective share in the settlement amount but do not establish that petitioners deposited the entire settlement amount in escrow. At the very least, petitioners should have attached proof of actual deposit in their Opposition to the Motion for Execution.

Neither can petitioners rely on the evidence presented during the proceedings conducted at the Philippine Consulate in San Francisco, California, United States. This Court takes judicial notice of the administrative case filed against Judge Grageda for his act of receiving evidence abroad without proper authority.

In *Maquiran v. Grageda,*[256] Judge Grageda was held administratively liable for conducting proceedings in the United States in relation to Civil Case No. 95-45 without this Court's approval.[257] Although he was granted authority to travel to the United States from August 26, 2003 to September 15, 2003, it was for the sole purpose of visiting his daughter:[258]

> [N]o matter how noble [Judge Grageda's] intention was, he is not at liberty to commit acts of judicial indiscretion. *The proceedings conducted by [Judge Grageda] abroad are outside the territorial jurisdiction of the Philippine Courts. He is the Presiding Judge of Branch 4 of the Regional Trial Court for the Eleventh Judicial Region, the territorial jurisdiction of which is limited only to Panabo, Davao del Norte*. This Court had not granted him any authority to conduct the proceedings abroad.
>
> . . . .
>
> *It is not [Judge Grageda's] duty to secure these documents for the defendants, as he is the judge in the pending case and not the counsel of the defendants*. Judges in their zeal to search for the truth should not lose the proper judicial perspective, and should see to it that in the execution of their duties, they do not overstep the limitations of their power as laid by the rules of procedure.[259] (Emphasis supplied, citations omitted)

---

[256] 491 Phil. 205 (2005) [Per *J.* Austria Martinez, Second Division].

[257] *Id*. at 212-217.

[258] *Id*. at 218.

[259] *Id*. at 221.

Judge Grageda was meted a penalty of suspension from service for a period of six (6) months.[260]

Although Branch 4, Regional Trial Court, Panabo City directed the implementation of the Writ of Execution against petitioners in the Omnibus Order dated December 14, 2006, it nevertheless allowed petitioners to take the deposition of their United States counsel, Mr. Stubbs, to prove compliance with the Compromise Agreement. [261] At the same time, and to ensure the orderly flow of proceedings, petitioners waited for the adverse party to rest its case before making a formal offer of evidence.

However, presiding Judge Grageda inhibited himself from further hearing the case before the Regional Trial Court, Panabo City could act on the pending incidents. The case was then transferred to Davao City due to the hostile environment in Panabo City. Succeeding events further delayed the proceedings.

Given the circumstances of this case, petitioners cannot be faulted for failing to make a formal offer of evidence because they were denied the opportunity to do so. Respondent court should have given petitioners the chance to offer the deposition of Mr. Stubbs in evidence before acting on the pending incidents of the case. Thus, respondent court gravely abused its discretion in issuing the Order dated July 10, 2009, which affirmed execution against petitioners.

Respondent court also erred in issuing the Order dated July 10, 2009. Petitioners' subsidiaries and affiliates cannot be adjudged solidarily liable.

Under the Compromise Agreement, the law that shall govern its interpretation is the law of Texas, United States.[262] In this jurisdiction, courts are not authorized to "take judicial notice of foreign laws."[263] The laws of a foreign country must "be

[260] *Id.* at 231.

[261] *Rollo*, p. 17.

[262] *Id.* at 269.

[263] *ATCI Overseas Corporation v. Echin*, 647 Phil. 43, 50 (2010) [Per *J.* Carpio Morales, Third Division].

properly pleaded and proved" as facts.[264] Otherwise, under the doctrine of processual presumption, foreign law shall be presumed to be the same as domestic law.[265] Unfortunately, there is no evidence that Texan law has been proven as a fact. Hence, this Court is constrained to apply Philippine law.

III

Solidary liability under Philippine law is not to be inferred lightly but must be clearly expressed.[266] Under Article 1207 of the Civil Code, there is solidary liability when "the obligation expressly so states, or when the law or the nature of the obligation requires solidarity."[267]

The Compromise Agreement provided:

25. Affiliates and Successors

> This Agreement and the rights, obligations, and covenants contained herein shall inure to the benefit of and be binding upon The Plaintiffs and Settling Defendants and their respective subsidiaries, affiliates, controlled and related entities, successors, and assigns.[268]

Clearly, the Compromise Agreement did not impose solidary liability on the parties' subsidiaries, affiliates, controlled, and related entities, successors, and assigns but merely allowed them to benefit from its effects. Thus, respondent Judge Omelio gravely abused his discretion in holding that the petitioners' subsidiaries and affiliates were solidarily liable under the Compromise Agreement.

Furthermore, there is no reason for respondent court to pierce the veil of corporate fiction. There is hardly any evidence to

---

[264] *Id*.

[265] *Id.*

[266] *Spouses Berot v. Siapno*, 738 Phil. 673, 690 (2014) [Per *J*. Sereno, First Division] citing *PH Credit Corporation v. Court of Appeals,* 421 Phil. 821 (2001) [Per *J*. Panganiban, Third Division].

[267] CIVIL CODE, Art. 1207, par. 2.

[268] *Rollo,* p. 270.

show that petitioners abused their separate juridical identity to evade their obligation under the Compromise Agreement.

Consequently, the Amended Order dated August 11, 2009, the Amended Writ of Execution, and the Alias Writ of Execution are void for having been issued by respondent court with grave abuse of discretion.

Respondent court's fervor in ordering the execution of the compromise agreement appears to be fueled by its compassion towards the workers who have allegedly been exposed to DBCP. However, prudence and judicial restraint dictate that a court's sympathy towards litigants should yield to established legal rules. Moreover, this jurisdiction should not alter the mechanism established for claims here and abroad as it can undo the entire process for all the farmers involved. The remedy of any unpaid claimant would be to establish their claims with the mediator named in the Compromise Agreement. Counsels for the farmers and their families should have followed this clear, legal course mandated in the Compromise Agreement. This would have abbreviated the further suffering of the respondents.

Considering that respondent Judge Omelio has been dismissed from service in 2013,[269] the last issue raised by petitioners has been rendered moot and academic. It need not be tackled by this Court.

WHEREFORE, the Petition for Certiorari is **GRANTED**. The assailed orders and writs are **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion.

SO ORDERED.

Peralta (Acting Chairperson) and *Jardeleza,*[*] *JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

---

[269] Judge George E. Omelio was dismissed from service for gross ignorance of the law and for violation of judicial conduct in *Peralta v. Omelio*, 720 Phil. 60 (2013) [*Per Curiam, En Banc*].

[*] Designated Additional member per Raffle dated May 29, 2017.

THIRD DIVISION

[G.R. No. 191174. June 7, 2017]

PARADIGM DEVELOPMENT CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACTS OF PLEDGE AND MORTGAGE; REQUISITES.—** [T]he registration of the REM contract is not essential to its validity. Article 2085 of the Civil Code provides: "Art. 2085. The following requisites are essential to the contracts of pledge and mortgage: (1) That they be constituted to secure the fulfillment of a principal obligation; (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged; (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property."

2. **ID.; ID.; ID.; VOIDABLE CONTRACTS; FRAUD; TO ANNUL OR AVOID A CONTRACT AND RENDER IT VOIDABLE, THE FRAUD MUST BE SO MATERIAL THAT HAD IT NOT BEEN PRESENT, THE DEFRAUDED PARTY WOULD NOT HAVE ENTERED INTO THE CONTRACT.—** Under Article 1344 of the Civil Code, the fraud must be serious to annul or avoid a contract and render it voidable. This fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract. In the present case, even if FEBTC represented that it will not register one of the REMs, PDCP cannot disown the REMs it executed after FEBTC reneged on its alleged promise. x x x [W]ith or without the registration of the REMs, as between the parties thereto, the same is valid and PDCP is already bound thereby. The signature of PDCP's President coupled with its act of surrendering the titles to the

four properties to FEBTC is proof that no fraud existed in the execution of the contract. Arguably at most, FEBTC's act of registering the mortgage only amounted to *dolo incidente* which is not the kind of fraud that avoids a contract.

3. **ID.; ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; IN SUBSTITUTING A NEW DEBTOR IN THE PLACE OF THE ORIGINAL ONE, THE FORMER DEBTOR MUST BE EXPRESSLY RELEASED FROM THE OBLIGATION, AND THE NEW DEBTOR MUST ASSUME THE FORMER'S PLACE IN THE CONTRACTUAL RELATION.—** Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. Article 1293 of the Civil Code defines novation as "consists in substituting a new debtor in the place of the original one, [which] may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor." However, while the consent of the creditor need not be expressed but may be inferred from the creditor's clear and unmistakable acts, to change the person of the debtor, the former debtor must be **expressly released** from the obligation, and the third person or ***new debtor must assume the former's place in the contractual relation.***

4. **ID.; ID.; ID.; MORTGAGE CONTRACT; AN OBLIGATION IS NOT SECURED BY A MORTGAGE UNLESS IT COMES FAIRLY WITHIN THE TERMS OF THE MORTGAGE CONTRACT.—** [W]hile PDCP demanded from FEBTC for the segregation of Sengkon's availments under the Credit Line, FEBTC failed to heed PDCP's valid request and instead demanded for a comprehensive payment of Sengkon's entire obligation, unmindful of the fact of PDCP's status as a mere third-party mortgagor and not a principal debtor. As a third-party mortgagor, the limitation on its liability pertains not only to the properties it mortgaged but also to the obligations specifically secured thereby. It is well settled that while a REM may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.

5. **ID.; ID.; ID.; ID.; DRAGNET CLAUSE; REFERS TO A STIPULATION IN A REAL ESTATE MORTGAGE THAT EXTENDS THE COVERAGE OF A MORTGAGE TO ADVANCES OR LOANS OTHER THAN THOSE ALREADY OBTAINED OR SPECIFIED IN THE CONTRACT.—** A dragnet clause is a stipulation in a REM contract that extends the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract. Where there are several advances, however, a mortgage containing a dragnet clause will not be extended to cover future advances, unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor or unless there are clear and supportive evidence to the contrary. This is especially true in this case where the advances were not only several but were covered by different sub-facilities.

6. **MERCANTILE LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); FORECLOSURE PROCEEDINGS; PERSONAL NOTICE; NECESSARY IF THE PARTIES SO AGREED IN THEIR MORTGAGE CONTRACT.—** FEBTC's failure to comply with its contractual obligation to send notice to PDCP of the foreclosure sale is fatal to the validity of the foreclosure proceedings. In *Metropolitan Bank v. Wong*, the Court ruled that while as a rule, personal notice to the mortgagor is not required, such notice may be subject of a contractual stipulation, the breach of which is sufficient to nullify the foreclosure sale x x x. Stated differently, personal notice is necessary if the parties so agreed in their mortgage contract.

7. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT OF ADHESION; IN CASE OF DOUBT, THE DOUBT SHOULD BE RESOLVED AGAINST THE PARTY WHO PREPARED IT.—** That the portion on the mortgagor's address was left in blank cannot be simply swept under the rug as "an expression of general intent" that cannot prevail of the parties' specific intent not to require personal notice. Apart from the fact that this reasoning is based on a questionable doctrine, the CA's ruling completely ignored the fact that the mortgage contract containing said stipulation was a standard contract prepared by FEBTC itself. If the latter did not intend to require personal notice, on top of the statutory requirements of posting and publication, then said provision

should not have at all been included in the mortgage contract. In other words, the REMs in this case are contracts of adhesion, and in case of doubt, the doubt should be resolved against the party who prepared it. Accordingly, the CA should have considered the "doubt" created by the blank space in the mortgage contract against FEBTC and not in its favor.

APPEARANCES OF COUNSEL

Bernardo P. Fernandez for petitioner.
Benedicto Verzosa Felipe & Burkley Law Offices for respondent.

D E C I S I O N

REYES, *J*.:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated November 25, 2009 and Resolution[3] dated February 2, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 89755, which granted respondent Bank of the Philippine Islands' (BPI) appeal and accordingly dismissed the complaint filed by petitioner Paradigm Development Corporation of the Philippines (PDCP).

The Facts

Sometime in February 1996, Sengkon Trading (Sengkon), a sole proprietorship owned by Anita Go, obtained a loan from Far East Bank and Trust Company (FEBTC) under a credit facility denominated as Omnibus Line in the amount of ₱100 Million on several sub-facilities with their particular sub-limits

---

[1] *Rollo*, pp. 8-35.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Remedios A. Salazar-Fernando and Isaias P. Dicdican concurring; *id*. at 37-74.

[3] *Id*. at 76-77.

denominated as follows: (i) Discounting Line for ₱20 Million; (ii) Letter of Credit/Trust Receipt (LC-TR) Line for ₱60 Million; and (iii) Bills Purchased Line for ₱8 Million. This was embodied in the document denominated as "Agreement for Renewal of Omnibus Line."[4]

On April 19, 1996, FEBTC again granted Sengkon another credit facility, denominated as Credit Line, in the amount of ₱60 Million as contained in the "Agreement for Credit Line." Two real estate mortgage (REM) contracts were executed by PDCP President Anthony L. Go (Go) to partially secure Sengkon's obligations under this Credit Line. One REM, acknowledged on April 22, 1996, was constituted over Transfer Certificate of Title (TCT) No. RT-55259 (354583) and secured the amount of ₱8 Million. The other REM, acknowledged on December 19, 1997, was constituted over TCT Nos. RT-58281, RT-54993 (348989) and RT-55260 (352956) and secured the amount of ₱42,400,000.00.[5]

In a letter dated September 18, 1997, FEBTC informed Sengkon regarding the renewal, increase and conversion of its ₱100 Million Omnibus Line to ₱150 Million LC-TR Line and ₱20 Million Discounting Line, the renewal of the ₱60 Million Credit Line and ₱8 Million Bills Purchased Line.[6]

In the same letter, FEBTC also approved the request of Sengkon to change the account name from SENGKON TRADING to SENGKON TRADING, INC. (STI).[7]

Eventually, Sengkon defaulted in the payment of its loan obligations.[8] Thus, in a letter dated September 8, 1999, FEBTC demanded payment from PDCP of alleged Credit Line and Trust Receipt availments with a principal balance of ₱244,277,199.68

---

[4] RTC records, p. 696.

[5] *Rollo*, pp. 39-40.

[6] RTC records, p. 697.

[7] *Id*. at 698.

[8] *Rollo*, p. 40.

plus interest and other charges which Sengkon failed to pay. PDCP responded by requesting for segregation of Sengkon's obligations under the Credit Line and for the pertinent statement of account and supporting documents.[9]

Negotiations were then held and PDCP proposed to pay approximately ₱50 Million, allegedly corresponding to the obligations secured by its property, for the release of its properties but FEBTC pressed for a comprehensive repayment scheme for the entirety of Sengkon's obligations.[10]

Meanwhile, the negotiations were put on hold because BPI acquired FEBTC and assumed the rights and obligations of the latter.[11]

When negotiations for the payment of Sengkon's outstanding obligations, however, fell, FEBTC, on April 5, 2000, initiated foreclosure proceedings against the mortgaged properties of PDCP before the Regional Trial Court (RTC) of Quezon City.[12] In its Bid for the mortgaged properties, FEBTC's counsel stated that:

> On behalf of our client, [FEBTC], we hereby submit its Bid for the Real Properties including all improvements existing thereon covered by [TCT] Nos. RT – 55259 (354583), 58281, RT – 54993 (348989) and RT- 55260 (352956) which are the subject of the Auction Sale scheduled on June, 20, 2000 in the amount of:
>
> **SEVENTY[-]SIX MILLION FIVE HUNDRED THOUSAND PESOS ONLY (₱76,500,000.00), Philippine Currency.**
>
> Please note that the aforesaid Bid is only in **PARTIAL SETTLEMENT** of the obligation of [PDCP], x x x.[13]

Upon verification with the Registry of Deeds, PDCP discovered that FEBTC extra-judicially foreclosed on June 20,

---

[9] RTC records, p. 699.

[10] *Id*.

[11] *Id*.

[12] *Rollo*, pp. 40-41.

[13] RTC records, p. 65.

2000 the first and second mortgage without notice to it as mortgagor and sold the mortgaged properties to FEBTC as the lone bidder.[14] Thereafter, on August 8, 2000, the corresponding Certificate of Sale was registered.[15]

Consequently, on July 19, 2001, PDCP filed a Complaint for Annulment of Mortgage, Foreclosure, Certificate of Sale and Damages[16] with the RTC of Quezon City, against BPI, successor-in-interest of FEBTC, alleging that the REMs and their foreclosure were null and void.[17]

In its Amended Complaint,[18] PDCP alleged that FEBTC assured it that the mortgaged properties will only secure the Credit Line sub-facility of the Omnibus Line. With this understanding, PDCP President Go allegedly agreed to sign on two separate dates a pro-forma and blank REM, securing the amount of ₱42.4 Million and ₱8 Million, respectively. PDCP, however, claimed that it had no intent to be bound under the second REM, which was not intended to be a separate contract, but only a means to reduce registration expenses.[19]

Moreover, PDCP averred that sometime in September 1997, FEBTC allegedly requested it to sign a document which would effectively extend the liability of the properties covered by the mortgage beyond the Credit Line. Because of its refusal to sign said document, it surmised that this must have been the reason why, as it later discovered, FEBTC registered not only the first but also the second REM, contrary to the parties' agreement.[20]

---

[14] *Id*. at 699.

[15] *Id*. at 700.

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

[17] *Id*. at 5.

[18] *Id*. at 289-299.

[19] *Id*. at 291-293.

[20] *Id*. at 293.

In asking for the nullity of the REMs and the foreclosure proceeding, PDCP alleged:

a.) THAT although the [REM] of April 22, 1996 for Php 8.0 Million was not a separate security but was merely intended to reduce registration expenses, FEBTC, [BPI's] predecessor-in-interest, fraudulently and in violation of the original intent and agreement of the parties, made it appear that said [REM] of April 22, 1996 was separate and distinct from that of December 18, 1997 and caused the registration of both mortgages with separate considerations totaling Php 50.4 Million;

b.) THAT the subject [REMs] were foreclosed to answer not only for obligations incurred under SENGKON's Credit Line but also for other obligations of SENGKON and other companies which were not secured by said mortgages;

c.) THAT no notice was given to or received by [PDCP] of the projected foreclosure x x x since the notice of said foreclosure was sent by defendant SHERIFF to an address (333 EDSA, Quezon City) other than [PDCP's] known address as stated in the [REMs] themselves (333 EDSA Caloocan City) x x x;

d.) THAT, contrary to the then prevailing Supreme Court Circular AM 99-10-05-0 x x x, only one (1) bidder was present and participated at the foreclosure sale[; and]

e.) THAT, without the knowledge and consent of [PDCP], obligation of SENGKON has been transferred to STI[,] a juridical personality separate and distinct from SENGKON, a single proprietorship. This substitution of SENGKON as debtor by STI x x x effectively novated the obligation of [PDCP] to FEBTC. x x x.[21] (Underlining ours)

Ruling of the RTC

On April 16, 2007, the RTC rendered its Decision[22] nullifying the REMs and the foreclosure proceedings. It also awarded damages to PDCP. The dispositive portion of the decision reads:

---

[21] *Id*. at 294-295.

[22] Rendered by Judge Rogelio M. Pizarro; *id*. at 695-706.

WHEREFORE, premises considered the Court renders judgment in favor of [PDCP] and against defendants [BPI], Sheriff and the Register of Deeds of Quezon City in the following manner:

1) Declaring null and void and of no further force and effect the following:

(a) the [REMs] (Annexes "F" and "F-1" hereof);
(b) the foreclosure thereof;
(c) the Certificate of Sale; and
(d) the entries relating to said [REMs] and Certificate of Sale annotated on TCT Nos. 58281, RT-54993 (348989), RT-55260 (352956) and RT-55259 (354583) covering the mortgaged properties;

2) Ordering defendant Registrar of Deeds to cancel all the annotations of the [REMs] and the Certificate of Sale on the above stated TCTs covering the mortgaged properties and otherwise to clear said TCTs of any liens and encumbrances annotated thereon relating to the invalid [REMs] aforesaid;

3) Ordering defendant [BPI] to return to [PDCP] the owner's duplicate copies of the TCTs covering the mortgaged properties free from any and all liens and encumbrances; and,

4) Ordering the defendant BPI to pay [PDCP] the following sums:

(a) Php 150,000.00 as attorney's fees; and,
(b) Php 50,000.00 as litigation expenses.

The Writ of Preliminary Injunction is hereby made FINAL and PERMANENT.

Costs against defendant [BPI].

SO ORDERED.[23]

The RTC observed that the availments under the Credit Line, secured by PDCP's properties, may be made only within one year, or from April 19, 1996 to April 30, 1997. While BPI claimed that the period of said credit line was extended up to July 31, 1997, PDCP was not notified of the extension and thus could not have consented to the extension. Anyhow, said

---

[23] *Id*. at 705-706.

the RTC, "no evidence had been adduced to show that Sengkon availed of any loan under the credit line up to July 31, 1997." Thus, in the absence of any monetary obligation that needed to be secured, the REM cannot be said to subsist.[24]

Further, the RTC agreed with PDCP that novation took place in this case, which resulted in discharging the latter from its obligations as third-party mortgagor. In addition, it also nullified the foreclosure proceedings because the original copies of the promissory notes (PNs), which were the basis of FEBTC's Petition for Extrajudicial Foreclosure of Mortgage, were not presented in court and no notice of the extrajudicial foreclosure sale was given to PDCP.[25]

Lastly, the RTC ruled that the shorter period of redemption under Republic Act No. 8791[26] cannot apply to PDCP considering that the REMs were executed prior to the effectivity of said law. As such, the longer period of redemption under Act No. 3135[27] applies.[28]

Aggrieved, BPI appealed to the CA.[29]

Ruling of the CA

In its Decision[30] dated November 25, 2009, the CA reversed the RTC's ruling on all points. The CA found PDCP's contentions incredible for the following reasons: (i) the fact that PDCP surrendered the titles to the mortgaged properties

---

[24] *Id*. at 701.

[25] *Id*. at 702-704.

[26] The General Banking Law of 2000. Approved on May 23, 2000.

[27] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES. Approved on March 26, 1924.

[28] RTC records, pp. 704-705.

[29] *Id*. at 707A-708.

[30] *Rollo*, pp. 37-74.

to FEBTC only shows that PDCP intended to mortgage all of these properties; (ii) if it were true that FEBTC assured PDCP that it would be registering only one of the two REMs in order to reduce registration expenses, then each of the two REMs should have covered the four properties but it was not. On the contrary, the four properties were spread out with one REM covering one of the four properties and the other REMs covering the remaining three properties; and (iii) PDCP never complained to FEBTC regarding the registration of the two REMs even after it discovered the same.[31]

Also, the CA ruled that novation could not have taken place from FEBTC's mere act of approving Sengkon's request to change account name from Sengkon to STI.[32]

Moreover, it held that the fact that FEBTC failed to submit the original copies of the PNs that formed the basis of its Petition for Extrajudicial Foreclosure of Mortgage cannot affect the validity of foreclosure because the validity of the obligations represented in those PNs was never denied by Sengkon nor by PDCP.[33]

The CA added that even if the obligations of Sengkon in credit facilities (other than the Credit Line) were included, since the REMs contain a dragnet clause, these other obligations were still covered by PDCP's REMs.[34] Lastly, the CA ruled that the failure to send a notice of extrajudicial foreclosure sale to PDCP did not affect the validity of the foreclosure sale because personal notice to the mortgagor is not even generally required.[35]

Hence, this present petition, where PDCP presented the following arguments:

---

[31] *Id*. at 51-53.

[32] *Id*. at 54-56.

[33] *Id*. at 60.

[34] *Id*. at 61-65.

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

I. THE FINDINGS IN THE CA DECISION WHICH DEVIATED ON ALMOST ALL POINTS FROM THOSE OF THE RTC ARE NOT IN ACCORD WITH THE RULES ON THE ASSESSMENT OF THE CREDIBILITY AND WEIGHT OF THE EVIDENCE;

II. THE VALIDITY OF THE REMs, AS UPHELD BY THE CA, IS VITIATED BY THE FACT THAT BPI'S PREDECESSOR-IN-INTEREST VIOLATED THE TRUE INTENT AND AGREEMENT OF THE PARTIES THERETO;

III. THE CA DECISION'S REJECTION OF PDCP'S NOVATION THEORY BASED ON THE ABSENCE OF AN EXPRESS RELEASE OF THE OLD DEBTOR AND THE SUBSTITUTION IN ITS PLACE OF A NEW DEBTOR IS MISPLACED AND ERRONEOUS;

IV. THE FORECLOSURE OF THE REMs WAS VITIATED NOT ONLY BY THE INADMISSIBILITY OF THE PNs UPON WHICH IT IS BASED BUT ALSO BECAUSE IT VIOLATED THE THERETO APPLICABLE RULES; and

V. THE APPLICATION BY THE CA OF THE SHORTENED PERIOD OF REDEMPTION IN THIS CASE VIOLATED THE NON-IMPAIRMENT AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION.[36]

Ruling of the Court

The Court finds the petition meritorious.

The registration of the REMs, even if contrary to the supposed intent of the parties, did not affect the validity of the mortgage contracts

According to PDCP, when FEBTC registered both REMs, even if the intent was only to register one, the validity of both

---

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

REMs was vitiated by lack of consent. PDCP claims that said intent is supported by the fact that the REMs were constituted merely as "partial security" for Sengkon's obligations and therefore there was really no intent to be bound under both – but only in one – REM.

The Court cannot see its way clear through PDCP's argument. To begin with, the registration of the REM contract is not essential to its validity. Article 2085 of the Civil Code provides:

> Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:
>
> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
>
> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.
>
> Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

In relation thereto, Article 2125 of the Civil Code reads:

> Article 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. **If the instrument is not recorded, the mortgage is nevertheless binding between the parties**.
>
> x x x x x x x x x (Emphasis ours)

In *Mobil Oil Philippines, Inc. v. Diocares, et al.*,[37] the trial court refused to order the foreclosure of the mortgaged properties on the ground that while an unregistered REM contract created a personal obligation between the parties, the same did not validly establish a REM. In reversing the trial court, the Court said:

---

[37] 140 Phil. 171 (1969).

The lower court predicated its inability to order the foreclosure in view of the categorical nature of the opening sentence of [Article 2125] that it is indispensable, "in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property." Not[e] that it ignored the succeeding sentence: "If the instrument is not recorded, the mortgage is nevertheless binding between the parties." Its conclusion, however, is that what was thus created was merely "a personal obligation but did not establish a [REM]."

Such a conclusion does not commend itself for approval. The codal provision is clear and explicit. Even if the instrument were not recorded, "the mortgage is nevertheless binding between the parties." The law cannot be any clearer. Effect must be given to it as written. The mortgage subsists; the parties are bound. **<u>As between them, the mere fact that there is as yet no compliance with the requirement that it be recorded cannot be a bar to foreclosure.</u>**

x x x x x x x x x

Moreover to rule as the lower court did would be to show less than fealty to the purpose that animated the legislators in giving expression to their will that the failure of the instrument to be recorded does not result in the mortgage being any the less "binding between the parties." In the language of the Report of the Code Commission: "In Article [2125] an additional provision is made that if the instrument of mortgage is not recorded, the mortgage, is nevertheless binding between the parties." We are not free to adopt then an interpretation, even assuming that the codal provision lacks the forthrightness and clarity that this particular norm does and therefore requires construction, that would frustrate or nullify such legislative objective.[38] (Citation omitted and emphasis and underlining ours)

Hence, even assuming that the parties indeed agreed to register only one of the two REMs, the subsequent registration of both REMs did not affect an already validly executed REM if there was no other basis for the declaration of its nullity. That the REMs were intended merely as "partial security" does not make PDCP's argument more plausible because as aptly observed by the CA, the PDCP's act of surrendering all the

[38] *Id.* at 175-177.

titles to the properties to FEBTC clearly establishes PDCP's intent to mortgage all of the four properties in favor of FEBTC to secure Sengkon's obligation under the Credit Line. The Court notes that the principal debtor, Sengkon, has several obligations under its Omnibus Line corresponding to the several credit sub-facilities made available to it by FEBTC. As found by the trial court, PDCP intended to be bound only for Sengkon's availments under the Credit Line sub-facility and not for just any of Sengkon's availments. Hence, it is in this sense that the phrase "partial security" should be logically understood.

In this regard, PDCP argued that what its President signed is a pro-forma REM whose important details were still left in blank at the time of its execution. But notably, nowhere in PDCP's Amended Complaint did it anchor its cause of action for the nullity of the REMs on this ground. While it indeed alleged this circumstance, PDCP's Amended Complaint is essentially premised on the supposed fraud employed on it by FEBTC consisting of the latter's assurances that the REMs it already signed would not be registered. In *Solidbank Corporation v. Mindanao Ferroalloy Corporation*,[39] the Court discussed the nature of fraud that would annul or avoid a contract, thus:

> Fraud refers to all kinds of deception – whether through insidious machination, manipulation, concealment or misrepresentation – that would lead an ordinarily prudent person into error after taking the circumstances into account. In contracts, a fraud known as *dolo causante* or causal fraud is basically a deception used by one party prior to or simultaneous with the contract, in order to secure the consent of the other. Needless to say, the deceit employed must be serious. In contradistinction, only some particular or accident of the obligation is referred to by incidental fraud or *dolo incidente*, or that which is not serious in character and without which the other party would have entered into the contract anyway.[40] (Citations omitted)

---

[39] 502 Phil. 651 (2005).

[40] *Id*. at 669.

Under Article 1344 of the Civil Code, the fraud must be serious to annul or avoid a contract and render it voidable. This fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract.

In the present case, even if FEBTC represented that it will not register one of the REMs, PDCP cannot disown the REMs it executed after FEBTC reneged on its alleged promise. As earlier stated, with or without the registration of the REMs, as between the parties thereto, the same is valid and PDCP is already bound thereby. The signature of PDCP's President coupled with its act of surrendering the titles to the four properties to FEBTC is proof that no fraud existed in the execution of the contract. Arguably at most, FEBTC's act of registering the mortgage only amounted to *dolo incidente* which is not the kind of fraud that avoids a contract.

No novation took place

The Court likewise agrees with the CA that no novation took place in the present case. Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. Article 1293 of the Civil Code defines novation as "consists in substituting a new debtor in the place of the original one, [which] may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor." However, while the consent of the creditor need not be expressed but may be inferred from the creditor's clear and unmistakable acts,[41] to change the person of the debtor, the former debtor must be **expressly released** from the obligation, and the third person or ***new debtor must assume the former's place in the contractual relation***.[42]

---

[41] *Bank of the Philippine Islands v. Domingo*, G.R. No. 169407, 0March 25, 2015, 754 SCRA 245, 263.

[42] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 764 (2013).

Thus, in *Ajax Marketing and Development Corporation v. CA*,[43] the Court had already ruled that:

> The well-settled rule is that novation is never presumed. Novation will not be allowed unless it is clearly shown by express agreement, or by acts of equal import. Thus, to effect an objective novation it is imperative that the new obligation expressly declare that the old obligation is thereby extinguished, or that the new obligation be on every point incompatible with the new one. In the same vein, to effect a subjective novation by a change in the person of the debtor **it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation**. There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety.[44] (Emphasis ours)

In the present case, PDCP failed to prove by preponderance of evidence that Sengkon was already expressly released from the obligation and that STI assumed the former's obligation. Again, as correctly pointed out by the CA, the Deed of Assumption of Line/Loan with Mortgage (Deed of Assumption) which was supposed to embody STI's assumption of all the obligations of Sengkon under the line, including but not necessarily limited to the repayment of all the outstanding availments thereon, as well as all applicable interests and other charges, was not signed by the parties.

Contrary to PDCP's claim, the CA's rejection of its claim of novation is not based on the absence of the mortgagor's conformity to the Deed of Assumption. The CA's rejection is based on the fact that the non-execution of the Deed of Assumption by Sengkon, STI and FEBTC rendered the existence of novation doubtful because of lack of clear proof that Sengkon is being **expressly released** from its obligation; that STI was already assuming Sengkon's former place in the contractual relation; and that FEBTC is giving its conformity to this arrangement. While FEBTC indeed approved Sengkon's request

---

[43] 318 Phil. 268 (1995).

[44] *Id*. at 274-275.

for the "change in account name" from Sengkon to STI, such mere change in account name alone does not meet the required degree of certainty to establish novation absent any other circumstance to bolster said conclusion.

The trial court's finding that Sengkon did not avail under the Credit Line taints the foreclosure of the mortgage

PDCP also claims that the foreclosure of the mortgage was invalid because the PNs that formed the basis of FEBTC's Petition for Extrajudicial Foreclosure of Mortgage were inadmissible in evidence. Rejecting this argument, the CA ruled that the admissibility of the PNs is a non-issue in this case because in questioning the validity of the REMs and the foreclosure proceedings, PDCP did not actually assail the validity or existence of said PNs; what it raised as an issue was whether the foreclosure covered obligations other than Sengkon's availment under the Credit Line. As the CA puts it:

[W]hat should have been the focal and critical question to be answered on the issue of whether the subject [REMs] were validly foreclosed should have been **whether the [REMs] executed by [PDCP] covered the obligations of [Sengkon] as represented in those [PNs] or, stated in another way, were the [PNs] used by defendant BPI in its foreclosure proceedings over [PDCP's] mortgages availments by [Sengkon] under its Credit Line?**

An examination of the subject [PNs] *vis-à-vis* the Agreement for Credit Line would yield an affirmative answer.

In the case at bar, a close look at the Agreement for Credit Line would reveal that the said credit facility for Php60 Million was granted in favor of [Sengkon] for the purpose of "Additional Working Capital" and that it would be "available by way of short term [PN]." In the same manner, an examination of [PNs] PN Nos. 2-002-028618, 2-002-029436 and 2-002-029437 would reveal that the said [PNs] were availed of by [Sengkon] for the purpose of "Additional Working Capital."[45] (Citations omitted and emphasis in the original)

---

[45] *Rollo*, pp. 61-62.

The Court cannot agree with the CA. In order to determine whether the obligations sought to be satisfied by the foreclosure proceedings were only Sengkon's availments under the Credit Line, the court necessarily needs to refer to the PNs themselves, as what the CA in fact did. Thus, it is actually the contents of these PNs that are in issue and the trial court did not err in applying the best evidence rule.

But even if the Court disregards the best evidence rule, the circumstances in this case militate against the CA's conclusion. The trial court made a factual finding that Sengkon's availment under the Credit Line, which is the one secured by PDCP's properties, may be made only within one year, or from April 19, 1996 to April 30, 1997. While FEBTC claimed that the period of said credit line was extended up to July 31, 1997, PDCP was not notified of the extension. At any rate, the RTC found that "no evidence had been adduced to show that Sengkon availed of any loan under the credit line up to July 31, 1997," which was the period of the extension.

Notably, while PDCP demanded from FEBTC for the segregation of Sengkon's availments under the Credit Line, FEBTC failed to heed PDCP's valid request and instead demanded for a comprehensive payment of Sengkon's entire obligation, unmindful of the fact of PDCP's status as a mere third-party mortgagor and not a principal debtor. As a third-party mortgagor, the limitation on its liability pertains not only to the properties it mortgaged but also to the obligations specifically secured thereby. It is well settled that while a REM may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.[46]

In this case, there was simply no evidence to support the conclusion that the PNs were in fact availments under the Credit Line secured by PDCP's properties. The PNs that were used

---

[46] *Traders Royal Bank v. Spouses Castañares*, 651 Phil. 236, 247 (2010).

by FEBTC in its Petition for Extrajudicial Foreclosure of Mortgage were all executed beyond the extended duration of Sengkon's Credit Line (or until July 1997). While FEBTC wrote a letter[47] dated September 18, 1997, which is a few days short of the date of the earliest PN (September 23, 1997), addressed to STI, approving the renewal of the debtor's Credit Line subject to the condition that the Line "shall be partially secured" by the PDCP's mortgaged properties, it is worthy to note that this letter did not bear the conforme of the debtor, lending credence to the trial court's observation. In this light, FEBTC's failure to heed PDCP's request for the segregation of the amounts secured by its properties assumes critical significance. The lack of proof that the availments subject of the foreclosure proceedings were within the coverage of PDCP's REMs explains FEBTC's omission.

Despite the foregoing, however, particularly the variance between the duration of Sengkon's Credit Line and the dates appearing on the face of the PNs, the CA upheld the validity of the foreclosure based merely on the similarity in the purpose for which the Credit Line was granted and the purpose for which the PNs were executed.

On the implied premise that what is material is only the identity of the debtor whose obligation the mortgagor secures, the CA cited *Prudential Bank v. Alviar*[48] and applied the dragnet clause in PDCP's REMs. According to the CA, since the REMs contain a dragnet clause, then PDCP's properties can be made to answer even if the PNs supporting the Petition for Extrajudicial Foreclosure of Mortgage refer to Sengkon's obligations in its other credit facilities.[49]

The CA unfortunately misapplied the ruling in *Prudential Bank*. In that case, the Court's discussion on the application of the blanket mortgage clause or dragnet clause was not as

---

[47] RTC records, pp. 316-319.

[48] 502 Phil. 595 (2005).

[49] *Rollo*, pp. 63-65.

much as critically important as the Court's novel application of the doctrine of reliance on security test.

A dragnet clause is a stipulation in a REM contract that extends the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract. Where there are several advances, however, a mortgage containing a dragnet clause will not be extended to cover future advances, unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor or unless there are clear and supportive evidence to the contrary.[50] This is especially true in this case where the advances were not only several but were covered by different sub-facilities. Thus, in *Prudential Bank*, the Court stated:

> In the case at bar, the subsequent loans obtained by respondents were secured by other securities, thus: PN BD#76/C-345, executed by Don Alviar was secured by a "hold-out" on his foreign currency savings account, while PN BD#76/C-430, executed by respondents for Donalco Trading, Inc., was secured by "Clean-Phase out TOD CA 3923" and eventually by a deed of assignment on two [PNs] executed by Bancom Realty Corporation with Deed of Guarantee in favor of A.U. Valencia and Co., and by a chattel mortgage on various heavy and transportation equipment. The matter of PN BD#76/C-430 has already been discussed. Thus, the critical issue is whether the "blanket mortgage" clause applies even to subsequent advancements for which other securities were intended, or particularly, to PN BD#76/C-345.
>
> Under American jurisprudence, two schools of thought have emerged on this question. One school advocates that a "dragnet clause" so worded as to be broad enough to cover all other debts in addition to the one specifically secured will be construed to cover a different debt, although such other debt is secured by another mortgage. The contrary thinking maintains that a mortgage with such a clause will not secure a note that expresses on its face that it is otherwise secured as to its entirety, at least to anything other than a deficiency after exhausting the security specified therein, such deficiency being an indebtedness within the meaning of the mortgage, in the absence of a special contract excluding it from the arrangement.

---

[50] *Asiatrust Development Bank v. Tuble*, 691 Phil. 732, 746 (2012).

The latter school represents the better position. The parties having conformed to the "blanket mortgage clause" or "dragnet clause," it is reasonable to conclude that they also agreed to an implied understanding that subsequent loans need not be secured by other securities, as the subsequent loans will be secured by the first mortgage. In other words, the sufficiency of the first security is a corollary component of the "dragnet clause." But of course, there is no prohibition, as in the mortgage contract in issue, against contractually requiring other securities for the subsequent loans. Thus, when the mortgagor takes another loan for which another security was given it could not be inferred that such loan was made in reliance solely on the original security with the "dragnet clause," but rather, on the new security given. This is the "reliance on the security test."

Hence, based on the "reliance on the security test," the California court in the cited case made an inquiry whether the second loan was made in reliance on the original security containing a "dragnet clause." Accordingly, finding a different security was taken for the second loan no intent that the parties relied on the security of the first loan could be inferred, so it was held. The rationale involved, the court said, was that the "dragnet clause" in the first security instrument constituted a continuing offer by the borrower to secure further loans under the security of the first security instrument, and that when the lender accepted a different security he did not accept the offer.

x x x x x x x x x

Indeed, in some instances, it has been held that **<u>in the absence of clear, supportive evidence of a contrary intention, a mortgage containing a "dragnet clause" will not be extended to cover future advances unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor</u>**.[51] (Citations omitted and emphasis and underlining ours)

In the present case, PDCP's REMs indeed contain a blanket mortgage clause in the following language:

That, for and in consideration of credit accommodations obtained from the [FEBTC], and to secure the payment of the same and those that may hereafter be obtained, the principal of all of which is hereby fixed at x x x PESOS x x x, Philippine Currency, as well as

[51] *Prudential Bank v. Alviar*, *supra* note 48, at 607-609.

those that the [FEBTC] may extend to the [PDCP], including interest and expenses or any other obligation owing to the [FEBTC], whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the [FEBTC] x x x.[52]

Nonetheless, the parties do not dispute that what the REMs secured were only Sengkon's availments under the Credit Line and not all of Sengkon's availments under other sub-facilities which are also secured by other collaterals.[53] Since the liability of PDCP's properties was not unqualified, the PNs, used as basis of the Petition for Extrajudicial Foreclosure of Mortgage should sufficiently indicate that it is within the terms of PDCP's limited liability. In this case, the PNs failed to make any reference to PDCP's availments, if any, under its Credit Line. In fact, it did not even mention Sengkon's securities under the Credit Line. Notably, the Disclosure Statements, which were "certified correct" by FEBTC's authorized representative, Ma. Luisa C. Ellescas, and which accompanied the PNs, failed to disclose whether the loan secured thereby was actually secured or not.

Thus, even if the Court brushes aside the Best Evidence Rule, the foregoing observations clearly support the trial court's observation that FEBTC's foreclosure did not actually cover the specific obligations secured by PDCP's properties.

FEBTC's failure to send personal notice to the mortgagor is fatal to the validity of the foreclosure proceedings

Indeed, FEBTC's failure to comply with its contractual obligation to send notice to PDCP of the foreclosure sale is fatal to the validity of the foreclosure proceedings. In *Metropolitan Bank v. Wong*,[54] the Court ruled that while as a rule, personal notice to the mortgagor is not required, such notice

---

[52] RTC records, pp. 451 and 456.

[53] *Id*. at 346.

[54] 412 Phil. 207 (2001).

may be subject of a contractual stipulation, the breach of which is sufficient to nullify the foreclosure sale, thus:

> In resolving the first query, we resort to the fundamental principle that a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:
>
> x x x x x x x x x
>
> The Act only requires (*1*) the posting of notices of sale in three public places, and (*2*) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. *Nevertheless*, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of [REM], agreed *inter alia*:
>
> > "all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St. Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE."
>
> Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.[55] (Citation omitted and italics in the original)

In trivializing FEBTC's failure to send personal notice to PDCP however, the CA, citing *Philippine National Bank v. Nepomuceno Productions, Inc.*,[56] ruled that since the principal object of a notice of sale is not so much to notify the mortgagor but to inform the public in general of the particularities of the foreclosure, then personal notice to the mortgagor may be

---

[55] *Id*. at 216-217.

[56] 442 Phil. 655 (2002).

disregarded.[57] The cited case, however, is inapplicable because that case did not in fact involve stipulations on personal notice to mortgagor nor the sending of notice to a wrong address. The issue involved in that case is whether the parties to the mortgage can validly waive the statutory requirements of posting and publication and not whether the bank can ignore a contractual stipulation for personal notice. Neither is *PNB v. Spouses Rabat*[58] likewise cited by the CA applicable because the trial court therein found that the mortgage contract did not in fact require that personal service of notice of foreclosure sale be given to the mortgagors. The CA's cavalier disregard of the mortgagor's contractual right to notice of the foreclosure sale runs contrary to jurisprudence. In *Wong*,[59] the Court already had the occasion to observe:

> It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. x x x.[60]

While the CA acknowledged that there was indeed a contractual stipulation for notice to PDCP as mortgagor, it considered the absence of a particular address in the space provided therefor in the mortgage contract as merely evincing an expression of "general intent" between the parties and that this cannot prevail against their "specific intent" that Act No. 3135 be the controlling law between them, citing *Cortes v. Intermediate Appellate Court.*[61]

The Court cannot agree with the CA. To begin with, the value of the doctrine enunciated in *Cortes* has long been considered questionable by this Court. Thus, in *Global Holiday*

---

[57] *Rollo*, pp. 65-66.

[58] 398 Phil. 654 (2000).

[59] *Supra* note 54.

[60] *Id*. at 212.

[61] 256 Phil. 979 (1989).

Ownership Corporation v. Metropolitan Bank and Trust Company,[62] the Court held:

> But what is stated in *Cortes* no longer applies in light of the Court's rulings in *Wong* and all the subsequent cases, which have been consistent. *Cortes* has never been cited in subsequent rulings of the Court, nor has the doctrine therein ever been reiterated. Its doctrinal value has been diminished by the policy enunciated in *Wong* and the subsequent cases; that is, that in addition to Section 3 of Act 3135, the *parties may stipulate that personal notice of foreclosure proceedings may be required. Act 3135 remains the controlling law, but the parties may agree, in addition to posting and publication, to include personal notice to the mortgagor, the non-observance of which renders the foreclosure proceedings null and void*, since the foreclosure proceedings become an illegal attempt by the mortgagee to appropriate the property for itself.
>
> Thus, we restate: the *general rule* is that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, and posting and publication will suffice. Sec. 3 of Act 3135 governing extra-judicial foreclosure of [REMs], as amended by Act 4118, requires only posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. The *exception* is when the parties stipulate that personal notice is additionally required to be given the mortgagor. Failure to abide by the general rule, or its exception, renders the foreclosure proceedings null and void.[63] (Citation omitted, italics ours, and emphasis and underlining in the original deleted)

In fact, the 2002 case of *Nepomuceno Productions*,[64] cited by the CA, already made it clear that while personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, this holds true only if the parties did not stipulate therefor. Stated differently, personal notice is necessary if the parties so agreed in their mortgage contract. In the present case, the parties provided in their REMs that:

---

[62] 607 Phil. 850 (2009).

[63] *Id*. at 864.

[64] *Supra* note 56.

12. All correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extrajudicial action shall be sent to the [PDCP] at __________________ or at the address that may hereafter be given in writing by the [PDCP] to the [FEBTC]. x x x.[65]

This provision clearly establishes the agreement between the parties that personal notice is required before FEBTC may proceed with the foreclosure of the property and thus, FEBTC's act of proceeding with the foreclosure despite the absence of personal notice to the mortgagor was its own lookout.

That the portion on the mortgagor's address was left in blank cannot be simply swept under the rug as "an expression of general intent" that cannot prevail of the parties' specific intent not to require personal notice. Apart from the fact that this reasoning is based on a questionable doctrine, the CA's ruling completely ignored the fact that the mortgage contract containing said stipulation was a standard contract prepared by FEBTC itself. If the latter did not intend to require personal notice, on top of the statutory requirements of posting and publication, then said provision should not have at all been included in the mortgage contract. In other words, the REMs in this case are contracts of adhesion, and in case of doubt, the doubt should be resolved against the party who prepared it.[66]

Accordingly, the CA should have considered the "doubt" created by the blank space in the mortgage contract against FEBTC and not in its favor. Nonetheless, even if the Court ignores this particular rule of interpretation, the fact that FEBTC caused the sending of a notice, albeit at a wrong address, to PDCP is itself a clear proof that the parties did intend to impose a contractual requirement of personal notice, FEBTC's undisputed breach of which sufficiently nullifies the foreclosure proceeding.

---

[65] RTC records, pp. 452 and 457.

[66] *South Pachem Development, Inc. v. CA*, 488 Phil. 87, 98(2004).

With the foregoing, the Court finds it unnecessary to discuss PDCP's argument based on the alleged violation of its constitutional right against impairment of obligations and contract.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated November 25, 2009 and Resolution dated February 2, 2010 of the Court of Appeals in CA-G.R. CV No. 89755 are hereby **ANNULLED** and **SET ASIDE**. The Decision dated April 16, 2007 of the Regional Trial Court of Quezon City, Branch 222, in Civil Case No. Q01-44630 is **REINSTATED** and **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Caguioa,*[*] and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 195003. June 7, 2017]

CITY OF BATANGAS, represented by HON. SEVERINA VILMA ABAYA,[1] in her capacity as CITY MAYOR OF BATANGAS, *petitioner, vs.* **PHILIPPINE SHELL PETROLEUM CORPORATION and SHELL PHILIPPINES EXPLORATION B.V.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; ORDINANCE; REQUISITES FOR VALIDITY.— The

[*] Additional member as per Raffle dated March 27, 2017 vice Associate Justice Francis H. Jardeleza.

[1] Referred to as Vilma Severina A. Dimacuha elsewhere in the records.

requisites for a valid ordinance are well established. Time and again, the Court has ruled that in order for an ordinance to be valid, it must not only be within the corporate powers of the concerned LGU to enact, but must also be passed in accordance with the procedure prescribed by law. Moreover, substantively, the ordinance (i) must not contravene the Constitution or any statute; (ii) must not be unfair or oppressive; (iii) must not be partial or discriminatory; (iv) must not prohibit, but may regulate trade; (v) must be general and consistent with public policy; and (vi) must not be unreasonable.

2. **ID.; ID.; ID.; ID.; EXERCISE DELEGATED POLICE POWER AS AGENTS OF THE STATE AND IT IS INCUMBENT UPON THEM TO ACT IN CONFORMITY TO THE WILL OF THEIR PRINCIPAL, THE STATE.—** Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order, safety, and general welfare of the people. As an inherent attribute of sovereignty, police power primarily rests with the State. In furtherance of the State's policy to foster genuine and meaningful local autonomy, the national legislature delegated the exercise of police power to local government units (LGUs) as agents of the State. Such delegation can be found in Section 16 of the LGC, which embodies the general welfare clause. Since LGUs exercise delegated police power as agents of the State, it is incumbent upon them to act in conformity to the will of their principal, the State. Necessarily, therefore, ordinances enacted pursuant to the general welfare clause may not subvert the State's will by contradicting national statutes.

3. **ID.; ID.; ID.; ID.; ORDINANCE; CONSIDERED VOID FOR BEING *ULTRA VIRES* WHEN IT IS ENACTED BY THE LOCAL GOVERNMENT UNIT IN EXCESS OF THE POWERS GRANTED TO IT; CASE AT BAR.—** The Water Code governs the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources. Under Article 3 thereof, water resources are placed under the control and regulation of the government through the National Water Resources Council, now the NWRB. In turn, the privilege to appropriate and use water is one which is exclusively granted and regulated by the State through water permits issued by the NWRB. Once granted, these water permits

continue to be valid save only for reasons spelled out under the Water Code itself. Conversely, the power to modify, suspend, cancel or revoke water permits already issued also rests with NWRB. x x x [T]he avowed purpose of the Assailed Ordinance, as stated in its whereas clauses, is the protection of local aquifers for the benefit of the inhabitants of Batangas City. Accordingly, the Assailed Ordinance mandates all heavy industries operating along Batangas Bay to use seawater in the operation of their respective facilities, and install desalination plants for this purpose. Failure to comply with this mandatory requirement would have the effect of precluding continuous operation, and exposing non-compliant parties to penal and administrative sanctions. There is no doubt, therefore, that the Assailed Ordinance effectively contravenes the provisions of the Water Code as it arrogates unto Batangas City the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, pertains solely to the NWRB. By enacting the Assailed Ordinance, Batangas City acted in excess of the powers granted to it as an LGU, rendering the Assailed Ordinance *ultra vires*. Being *ultra vires*, the Assailed Ordinance, in its entirety, is null and void.

4. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHERE THEY HAVE BEEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE UPON THE SUPREME COURT.—** [T]he measure of the substantive validity of an ordinance is the underlying factual basis for which it was enacted. Hence, without factual basis, an ordinance will necessarily fail the substantive test for validity. Batangas City's failure to prove the existence of factual basis to justify the enactment of the Assailed Ordinance had already been passed upon by the lower courts. x x x This Court, not being a trier of facts, accords the highest degree of respect to the findings of fact of the trial court, especially where, as here, they have been affirmed by the CA; accordingly, these findings will not be disturbed. To be sure, such findings are binding and conclusive upon this Court, and it is not the Court's function in a petition for review on *certiorari* to examine, evaluate or weigh anew the probative value of the evidence presented before the trial court. While there are recognized exceptions to this rule, the Court finds that none is present in this case.

APPEARANCES OF COUNSEL

Teodulfo A. Dequito for petitioner.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The policy of ensuring the autonomy of local governments was not intended to create an *imperium in imperio* and install intra-sovereign political subdivisions independent of the sovereign state.[2] As agents of the state, local governments should bear in mind that the police power devolved to them by law must be, at all times, exercised in a manner consistent with the will of their principal.

The Case

This is a petition for review on *certiorari*[3] (Petition) filed under Rule 45 of the Rules of Court against the Decision[4] dated May 25, 2010 (Assailed Decision) and Resolution[5] dated December 30, 2010 (Assailed Resolution) in CA-G.R. CV No. 90373 rendered by the Tenth Division of the Court of Appeals (CA). The Assailed Decision and Resolution stem from an appeal from the Decision[6] dated June 29, 2007 rendered by the Regional Trial Court of Batangas City (RTC), Branch 84 in SP. Civil Case Nos. 7924-7925, declaring as invalid Ordinance No. 3, series of 2001,[7] (Assailed Ordinance), enacted by the

---

[2] *Batangas CATV, Inc. v. Court of Appeals*, 482 Phil. 544, 571 (2004).

[3] *Rollo*, pp. 3-21.

[4] *Id*. at 315-333. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring.

[5] *Id*. at 335-336.

[6] *Id*. at 64-90. Penned by Presiding Judge Paterno V. Tac-an.

[7] Entitled "AN ACT REQUIRING ALL ESTABLISHED HEAVY INDUSTRIES AND THOSE TO BE ESTABLISHED ALONG THE BATANGAS

Sangguniang Panlungsod (Sangguniang Panlungsod) of the City of Batangas (Batangas City).[8]

The Facts

Batangas City is a local government unit created by virtue of its charter, Republic Act No. 5495 (RA 5495). Under RA 5495, Batangas City constitutes a political body corporate, and is endowed with powers which pertain to a municipal corporation[9] The *Sangguniang Panlungsod* is the legislative body of Batangas City.

Philippine Shell Petroleum Corporation (PSPC) is a duly organized Philippine corporation engaged in the business of manufacturing, refining and distribution of petroleum products.[10] PSPC owns and operates a refinery situated in Tabangao, Batangas City (Tabangao Refinery).[11]

Shell Philippines Exploration, B.V. (SPEX) is a foreign corporation licensed to do business in the Philippines.[12] In furtherance of the mandate of Presidential Decree No. 87 (PD 87) to promote the discovery and production of indigenous petroleum, the Department of Energy (DOE) executed Service Contract No. 38 (SC 38) with SPEX under which SPEX was tasked to explore and develop possible petroleum sources in North Western Palawan.[13] SPEX's exploration led to the discovery of an abundant source of natural gas in the Malampaya

---

CITY PORTION OF THE BATANGAS BAY AND OTHER AREAS DECLARED AS HEAVY INDUSTRIAL ZONE TO CONSTRUCT DESALINATION PLANT AND PROHIBITING THE USE OF EXPLOITATION OF UNDERGROUND FRESH WATER FOR COOLING SYSTEM AND INDUSTRIAL PURPOSES," *rollo*, pp. 24-26.

[8] *Rollo*, pp. 89-90.

[9] RA 5495, Sec. 3.

[10] *Rollo*, pp. 139-140.

[11] *Id*. at 141.

[12] *Id*. at 191.

[13] *Id*. at 193.

field off the shores of Palawan, which thereafter gave rise to the Malampaya Project. The Malampaya Project required the construction of a 504-kilometer offshore pipeline for the transport of natural gas from Malampaya field to Batangas, for treatment in PSPC's Tabangao Refinery.[14]

On May 28, 2001, the *Sangguniang Panlungsod* enacted the Assailed Ordinance which requires heavy industries operating along the portions of Batangas Bay within the territorial jurisdiction of Batangas City to construct desalination plants to facilitate the use of seawater as coolant for their industrial facilities.[15] The pertinent portions of the Assailed Ordinance state:

SECTION 3. – MANDATORY REQUIREMENT FOR THE APPROVAL OF HEAVY INDUSTRIES ALONG THE BATANGAS CITY PORTION OF BATANGAS BAY AND OTHER AREAS. – In addition to the requirements provided by laws and ordinances, the City Government shall not grant permit or clearance or its approval for any project or program involving the construction or establishment of heavy industries along the Batangas City portion of the Batangas Bay and other areas delineated as Heavy Industrial Zone without the required DESALINATION PLANT for use of sea water instead of underground fresh water for cooling system and industrial purposes.

SECTION 4. – GRACE PERIOD PROVIDED FOR HEAVY INDUSTRIES. - All heavy industries already established or approved by the City Government prior to the enactment of this Ordinance, including those to be established, are granted a period of five (5) years, counted from the date of approval of this Ordinance, to install [a] desalination plant.

SECTION 5. – AUTHORITY TO GRANT EXEMPTION FROM THE CONSTRUCTION OF DESALINATION PLANT. – The City Mayor with the concurrence of the Sangguniang Panlungsod may grant exemption for a given period to an industry from installation or construction of DESALINATION PLANT on the basis of the following conditions:

---

[14] *Id*. at 194-196.

[15] Batangas City Ordinance No. 3, s. 2001, Sec. 3; *id*. at 25.

5.1. The exemption will not adversely affect the environment, public health, public safety and the welfare of the people, more particularly, the local aquifers, as shown by a comprehensive ground water assessment or comprehensive hydrological study conducted by the industry and presented by the industry applying for exemption.

5.2. The industry or proposed project will support economic-based activities and provide livelihood, employment, vital community services and facilities while at the same time posing no adverse effect on the community.

5.3. A public hearing is conducted.

5.4. Such other reasonable conditions which the City Mayor may require with the concurrence of the Sangguniang Panlungsod.

x x x x x x x x x

SECTION 7. PENAL CLAUSE. - Any person who shall authorize the start of the construction, development or operation of any project considered as heavy industry without the approval of the government authorities herein mentioned shall suffer an imprisonment of not less than six (6) months nor more than one (1) year and a fine of ₱5,000.00.

If the violator is a juridical person or association, the penalty shall be imposed upon the owner, President, project manager and/or persons directly in charge of the construction, development and operation of the project.

SECTION 8. POWER OF THE CITY MAYOR TO ISSUE A CEASE AND DESIST ORDER. – The City Mayor, upon knowledge of the violation of this ordinance shall issue a cease and desist order for the stoppage of the construction, development or operation of the project or industry and shall exercise all powers necessary to give effect to the said order.

SECTION 9. ADMINISTRATIVE FINE. – An administrative fine/penalty of ₱5,000.00 per day of violation of this ordinance shall be imposed upon the owner, President, project manager, and/or persons directly in charge of the construction, development and operation of the project or industry.[16]

---

[16] *Rollo*, pp. 25-26.

The Assailed Ordinance was approved by the city mayor on June 7, 2001.

Heavy industries subject of the Assailed Ordinance had until May 28, 2006 to comply with its provisions.[17] Among the facilities affected by the Assailed Ordinance is PSPC's Tabangao Refinery.

Proceedings before the RTC

On May 23, 2006, PSPC filed against Batangas City and the *Sangguniang Panlungsod* a Petition for Declaration of Nullity (PSPC Petition) before the RTC praying that the Assailed Ordinance be declared null and void. The PSPC Petition was raffled to Branch 84, and docketed as SP Civil Case No. 7924.[18] Thereafter, SPEX filed a petition-in-intervention (Intervention) praying for the same relief.[19]

JG Summit Petrochemical Corporation (JG Summit) and First Gas Power Corporation (First Gas) filed similar petitions docketed as SP Civil Case Nos. 7925 (JG Summit Petition) and 7926 (First Gas Petition), respectively.[20] These petitions were likewise raffled to Branch 84, and consolidated with the PSPC Petition for joint trial.[21]

For its part, PSPC averred that the Assailed Ordinance constitutes an invalid exercise of police power as it failed to meet the substantive requirements for validity.[22] Particularly, PSPC argued that the Assailed Ordinance contravenes the Water Code of the Philippines (Water Code), and encroaches upon the power of the National Water Resources Board (NWRB) to regulate and control the Philippines' water resources.[23] In

---

[17] *Id*. at 318-319.

[18] *Id*. at 136-183, 315, 319.

[19] *Id*. at 190-227.

[20] *Id*. at 93.

[21] *Id*. at 93, 96.

[22] *Id*. at 138.

[23] *Id*. at 149.

addition, Batangas City and the *Sangguniang Panlungsod* failed to sufficiently show the factual or technical basis for its enactment.[24] In this connection, PSPC alleged that the Assailed Ordinance unduly singles out heavy industries, and holds them solely accountable for the loss of water and destruction of aquifers without basis, resulting in the deprivation of their property rights without due process of law.[25]

On the procedural aspect, PSPC contended that the Assailed Ordinance was not posted or published in a newspaper of general circulation in the province, nor were public hearings or consultations involving concerned parties conducted thereon.[26] Further, there are no records showing that the Assailed Ordinance, as approved by the *Sangguniang Panlungsod*, was forwarded to the *Sangguniang Panlalawigan* of the Province of Batangas after it was approved by the city mayor, as required by Section 56 of the Local Government Code (LGC).[27]

SPEX essentially adopted the allegations of PSPC and prayed for the same relief, asserting that it possesses material and direct interest in the subject matter of the PSPC Petition.[28]

In response, Batangas City and the *Sangguniang Panlungsod* maintained that they have the power to enact the Assailed Ordinance pursuant to the general welfare clause under the LGC.[29] According to them, the rationale of the Assailed Ordinance is to stop PSPC and other industries similarly situated from relying "too much" on ground water as coolants for their machineries, and alternatively promote the use of seawater for such purpose, considering that fresh ground water is a "perishable commodity."[30] Further, Batangas City and the *Sangguniang*

---

[24] *Id*. at 138.

[25] *Id*. at 149.

[26] *Id*. at 139, 150.

[27] *Id*. at 150, 178.

[28] *Id*. at 190-191.

[29] *Id*. at 229.

[30] *Id*.

Panlungsod countered that the "regulation or prohibition" on the use of ground water is merely incidental to the main purpose of the Assailed Ordinance, which is to compel heavy industries such as PSPC to construct desalination plants. Hence, provisions having regulatory and prohibitive effect may be taken out of the Assailed Ordinance without entirely impairing its validity.[31]

Further, Batangas City and the *Sangguniang Panlungsod* took exception to PSPC's allegations and asserted that the Assailed Ordinance had been published in Dyaryo Veritas, a newspaper of general circulation in the area. Moreover, Batangas City and the *Sangguniang Panlungsod* claimed that a joint public hearing on the Assailed Ordinance had in fact been conducted by the *Sangguniang Panlungsod* and *Sangguniang Panlalawigan*, where PSPC was duly represented.[32] In addition, Batangas City and the *Sangguniang Panlungsod* argued that the requirement of referral of ordinances to the *Sangguniang Panlalawigan* applies only to tax and other revenue measures.[33]

Finally, Batangas City and the *Sangguniang Panlungsod* averred that since PSPC and SPEX, along with other concerned heavy industries, essentially question the former's authority to regulate and prohibit the use of fresh ground water, they should have first referred their grievances to NWRB by filing a complaint for adjudication on the threatened revocation of their existing water permits.[34]

On June 21, 2007, the RTC resolved the First Gas Petition by issuing a Decision declaring the Assailed Ordinance null and void.[35]

Subsequently, on June 29, 2007 the RTC rendered a Decision,[36] this time resolving the PSPC and JG Summit petitions. The dispositive portion of said Decision reads:

---

[31] *Id*. at 230.

[32] *Id*.

[33] *Id*.

[34] *Id*. at 265-266.

[35] *Id*. at 30-31.

[36] *Supra* note 6.

It is evident that from foregoing factual milieu and parameters, the questioned ordinance is INVALID, as it is hereby declared INVALID, in its entirety for want of necessity and for not conducting prior public hearing, and for violating the due process clause of the Constitution with respect to its (sic) Sec. 8, City Ordinance No.3, [s]. 2001.

No pronouncement as to costs.

SO ORDERED.[37]

The RTC gave credence to the testimony of PSPC's witness Engineer Joeffrey Caranto (Engineer Caranto) who conducted a hydrogeology study on the Tabangao-Malitam watershed from which PSPC sources fresh ground water.[38] The RTC summarized the findings of said study in this wise:

1. A water balance x x x calculation of the Tabangao-Malitam groundwater system shows that the natural recharge (replenishment) rate far exceeds the current demand for water in the area. Hence, **there is no threat of depletion of the groundwater resource[s] in the Tabangao-Malitam [w]atershed that purportedly may result from PSPC's deep well pumping**.

2. **Water levels in the PSPC wells have not lowered significantly over the last three (3) decades, indicating that there is no substantial diminution of the supply of groundwater.**

3. Among the four PSPC wells, only one [1] well shows very slightly elevated levels of chloride at 300 milligrams per liter which however is very low compared to seawater (which measures 20,000 milligrams of chloride per liter). The chloride levels in the other nearby PSPC wells are all within drinking water standards and have not increased in the last four (4) decades of usage. **This indicates that salt water intrusion is not occurring in the PSPC wells.**[39] (Emphasis supplied)

---

[37] *Id*. at 89-90.

[38] *Id.* at 72, 88.

[39] *Id*. at 73.

The RTC also noted that the *Sangguniang Panlungsod* failed to consult the NWRB before enacting the Assailed Ordinance, thereby encroaching upon its authority.[40]

Anent Section 8, the RTC concluded that the power granted to the city mayor to cause the issuance of cease and desist orders against the use of ground water without prior notice and hearing constitutes a violation of the due process clause.[41]

Proceedings before the CA

Batangas City and the *Sangguniang Panlungsod* filed separate notices of appeal from the decisions resolving the PSPC, JG Summit and First Gas petitions.[42]

The appeals against JG Summit and First Gas were raffled to the Fourth Division (CA Fourth Division) and were docketed as CA-G.R. CV Nos. 90324 (JG Summit Appeal) and 90365 (First Gas Appeal), respectively. Meanwhile, the appeal filed against PSPC and SPEX was raffled to the Tenth Division (CA Tenth Division), and docketed as CA-G.R. CV No. 90373 (PSPC Appeal).

In the PSPC Appeal, Batangas City and the *Sangguniang Panlungsod*, as appellants, averred that the RTC failed to consider the testimonies of barangay captains Joel Caaway and Calixto Villena of Barangays Tabangao Aplaya and Pinamucan, respectively, who testified that some wells in their areas had dried up, while others had begun to produce salt water.[43] These testimonies, according to Batangas City and the *Sangguniang Panlungsod*, serve as sufficient factual bases for the enactment of the Assailed Ordinance, as "there could be no higher degree of evidence than the actual experience of the inhabitants in the area."[44]

---

[40] *Id*. at 89; Presidential Decree No. 424, as amended by Presidential Decree No. 1067 and Executive Order No. 124-A, series of 1987.

[41] *Id*.

[42] *Id*. at 30-31, 92-93.

[43] *Id*. at 84-85.

[44] *Id*. at 101-102.

On May 28, 2009, the CA Fourth Division issued a Joint Decision[45] resolving the JG Summit and First Gas appeals. **The Joint Decision affirmed the RTC's decisions in SP Civil Case Nos. 7924-7925 (involving JG Summit and PSPC) and 7926 (involving First Gas).**[46]

On October 15, 2009, the CA Tenth Division directed Batangas City and the *Sangguniang Panlungsod* on one hand, and PSPC and SPEX on the other, to file their respective memoranda on the filing of separate appeals, and the implications of the Joint Decision of the CA Fourth Division on the resolution of the PSPC Appeal.[47]

In their Joint Memorandum,[48] PSPC and SPEX averred that the Joint Decision in the JG Summit and First Gas appeals bars a contrary decision in the PSPC Appeal, pursuant to the principle of judicial stability.[49] PSPC and SPEX further contended that the filing of multiple appeals involving the same issues and parties was tantamount to forum shopping.[50]

In their defense, Batangas City and the *Sangguniang Panlungsod* claimed that the filing of separate appeals was made necessary by the fact that the separate decisions of the RTC in SP Civil Case Nos. 7924-7925 and 7926 were issued more than fifteen (15) days apart.[51]

On the basis of the submissions of the parties, the CA Tenth Division issued the Assailed Decision dismissing the appeal

---

[45] *Id*. at 30-59. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. concurring.

[46] *Id*. at 30-31, 58-59.

[47] *Id*. at 325.

[48] The Joint Memorandum does not form part of the records of the case.

[49] *Rollo*, p. 325.

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

[51] *Id*. at 326.

filed against PSPC and SPEX for lack of merit. The relevant portions of the Assailed Decision read:

> **City Ordinance No. 3, S. 2001 contravenes Presidential Decree No. 1067, better known as "*The Water Code of the Philippines*" as it is an encroachment into the authority of the [NWRB]. The use of water resources is under the regulatory power of the national government.** This is explicit from the provisions of the Water Code which states that —
>
> > "The utilization, explo[i]tation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the [NWRB]."
>
> Although respondents-appellants insist that the city ordinance is not an absolute prohibition but merely a regulation on the use of fresh groundwater for cooling systems and industrial purposes the argument cannot justify the attempt to usurp the NWRB's power to regulate and control water resources. Moreover, not only does the city ordinance prohibit or regulate the use of fresh groundwater in disregard of previously granted water permits from the NWRB but also directs the installation of desalination plants for purposes of utilizing sea water, without the requisite water permit from the NWRB.
>
> x x x The police power of the *Sangguniang Panglungsod* is subordinate to the constitutional limitations that its exercise must be reasonable and for the public good. Without the concurrence of these two requisites, the ordinance will not muster the test of a valid police measure and should be struck down. The trial court aptly examined the city ordinance against the requirement of reasonable necessity and correctly concluded that the subject ordinance failed to prove that it was reasonably necessary to prohibit heavy industries from using ground water and requiring them instead to construct desalination plants. There must be a reasonable relation between the purposes of the police measure and the means employed for its accomplishment. Arbitrary invasion of personal rights and those pertaining to private property will not be allowed even under the guise of protecting public interest. It has not been sufficiently demonstrated that there exists no other means less intrusive of private rights that would equally be effective for the accomplishment of the same purpose.
>
> With the foregoing premises considered, there is no more necessity to address the other errors raised in the instant appeal.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated 29 June 2007 rendered by the Regional Trial Court of Batangas City, Branch 84, in SP Civil Case No. 7924, declaring invalid City Ordinance No. 3, S. 2001 is hereby **AFFIRMED**.

SO ORDERED.[52] (Emphasis supplied)

Batangas City and the *Sangguniang Panlungsod* filed a Motion for Reconsideration[53] (MR) dated June 21, 2010, which the CA Tenth Division subsequently denied through the Assailed Resolution. The CA Tenth Division found that the MR merely reiterated the arguments relied upon in the appeal, which were already passed upon in the Assailed Decision.[54]

Batangas City and the *Sangguniang Panlungsod* received a copy of the Assailed Resolution on January 13, 2011.

On January 25, 2011, Batangas City filed the present Petition.[55] Notably, the Petition does not name the *Sangguniang Panlungsod* as party,[56] and only the signature of then city mayor Severina Vilma Abaya appears on the Verification and Certification of Non-Forum Shopping attached thereto.[57]

PSPC and SPEX filed a Motion for Additional Time[58] dated April 1, 2011, praying for a period of ten (10) days therefrom to file their comment. Thereafter, PSPC and SPEX filed a Second Motion for Additional Time[59] dated April 11, 2011, praying for an additional period of seven (7) days to file said comment.

---

[52] *Id*. at 330-332.

[53] *Id*. at 111-132.

[54] *Id*. at 335-336.

[55] *Id*. at 3.

[56] *Id*.

[57] *Id*. at 19-20. There being no indication that the Petition was likewise filed on behalf of the *Sangguniang Panglungsod*, Batangas City was deemed as sole petitioner hereunder.

[58] *Id*. at 304-307.

[59] *Id*. at 340-343.

Finally, PSPC and SPEX filed their Joint Comment on and/or Opposition to the Petition for Review on *Certiorari*[60] (Joint Comment/Opposition) dated April 25, 2011 on even date.

Batangas City failed to timely file its reply to the Joint Comment/Opposition, prompting them to file a Manifestation and Motion for Extension of Time to File a Reply (Manifestation and Motion) dated December 12, 2011.[61] The Manifestation and Motion prayed that it be granted twenty (20) days therefrom to file its reply.[62] Accordingly, Batangas City fiied its Reply dated December 21, 2011 on even date.[63]

The Issue

The sole issue for this Court's determination is whether the CA erred in affirming the RTC Decision which declared the Assailed Ordinance invalid.

The Court's Ruling

Batangas City contends that it has the legal authority to enact ordinances in the exercise of its police power for the purpose of promoting the general welfare of its inhabitants.[64] Thus, it asserts that it has the power to regulate PSPC's and SPEX's right to use ground water, as continued use would be injurious to public interest.[65]

Further, Batangas City insists that there is factual basis to justify the enactment of the Assailed Ordinance.[66] As testified to by barangay captains Joel Caaway and Calixto Villena, a gradual change in the quality and quantity of ground water had

---

[60] *Id*. at 353-391.

[61] *Id*. at 499-501.

[62] *Id*. at 500.

[63] *Id*. at 505-513.

[64] *Id*. at 13.

[65] *Id*. at 14.

[66] *Id*. at 7-12.

taken place due to the increase in the number of industrial plants along Batangas Bay.[67] According to Batangas City, these testimonies should be given more weight, since they are based on "actual facts and experience."[68]

These assertions lack merit.

The amendment of the Petition should be allowed in the interest of justice.

At the outset, the Court notes that Batangas City erroneously referred to the Joint Decision issued by the CA Fourth Division in the JG Summit and First Gas appeals as the subject of this Petition, instead of the Decision issued by the CA Tenth Division resolving the PSPC Appeal. Batangas City sought to correct this error in its Reply, thus:

> 1. After diligent and careful review [of] the Petition for Review submitted by the undersigned, it was found out that there was an error which was inadvertently committed in the first paragraph of the fifth (5th) page of the Petition;
>
> 2. The first paragraph on page 5 of the Petition for Review on Certiorari x x x;
>
> x x x x x x x x x
>
> Should be amended to appear as:
>
> "On June 13, 2007, herein Petitioner City Government of Batangas received the decision of the Regional Trial Court (RTC), Branch 84 of Batangas City ruling in favor of Respondents, [PSPC] and Intervenor [SPEX] x x x. Petitioner filed its Notice of Appeal x x x on 26 July 2007. The case was elevated to the Court of Appeals and the Tenth Division rendered the 25 May 2010 favoring [PSPC] and SPEX x x x. The City Government of Batangas filed a Motion for Reconsideration x x x. The motion was denied by the Tenth Division of the Court of Appeals in its resolution dated 30 December 2010 x x x. Hence, now this Petition."[69] (Emphasis omitted)

---

[67] *Id*. at 16.

[68] *Id*.

[69] *Id*. at 505-506.

Considering the nature of the issues involved in the present Petition, and the lack of any evidence showing that Batangas City's error resulted from anything more than inadvertence, the Court resolves to permit the amendment of the Petition in the interest of substantial justice.

The Assailed Ordinance is void for being ultra vires, for being contrary to existing law, and for lack of evidence showing the existence of factual basis for its enactment.

The requisites for a valid ordinance are well established. Time and again, the Court has ruled that in order for an ordinance to be valid, it must not only be within the corporate powers of the concerned LGU to enact, but must also be passed in accordance with the procedure prescribed by law. Moreover, substantively, the ordinance (i) must not contravene the Constitution or any statute; (ii) must not be unfair or oppressive; (iii) must not be partial or discriminatory; (iv) must not prohibit, but may regulate trade; (v) must be general and consistent with public policy; and (vi) must not be unreasonable.[70]

Batangas City claims that the enactment of the Assailed Ordinance constitutes a valid exercise of its police power. This claim is erroneous.

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order, safety, and general welfare of the people.[71] As an inherent attribute of sovereignty, police power primarily rests with the State. In furtherance of the State's policy to foster genuine and meaningful local autonomy, the national legislature delegated the exercise of police power to local government units (LGUs) as agents of

---

[70] *Social Justice Society (SJS) v. Atienza, Jr.*, 568 Phil. 658, 699-700 (2008).

[71] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 968 (2000).

the State.[72] Such delegation can be found in Section 16[73] of the LGC, which embodies the general welfare clause.[74]

Since LGUs exercise delegated police power as agents of the State, it is incumbent upon them to act in conformity to the will of their principal, the State.[75] Necessarily, therefore, ordinances enacted pursuant to the general welfare clause may not subvert the State's will by contradicting national statutes. Thus, in *Batangas CATV, Inc. v. Court of Appeals*,[76] the Court struck down an ordinance enacted by Batangas City which granted the *Sangguniang Panlungsod* the power to fix subscriber rates charged by CATV providers operating within the former's territory, as this directly violated a general law which grants such power exclusively to the National Telecommunications Commission. In so ruling, the Court stressed that municipalities are precluded from regulating conduct already covered by a statute involving the same subject matter, hence:

In *De la Cruz vs. Paraz*, we laid the general rule "that ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and *not inconsistent with the laws or policy of the State*."

---

[72] *Id*. at 968-969.

[73] Section 16 of the LGC provides:

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

[74] *Supra* note 71, at 969.

[75] See *Batangas CATV, Inc. v. Court of Appeals*, *supra* note 2, at 562.

[76] See *id*. at 562-563.

x x x x x x x x x

In this regard, it is appropriate to stress that where the state legislature has made provision for the regulation of conduct, it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct. In *Keller vs. State*, it was held that: "*Where there is no express power in the charter of a municipality authorizing it to adopt ordinances regulating certain matters which are specifically covered by a general statute, a municipal ordinance, insofar as it attempts to regulate the subject which is completely covered by a general statute of the legislature, may be rendered invalid.* x x x *Where the subject is o(statewide concern, and the legislature has appropriated the field and declared the rule, its declaration is binding throughout the State.*" A reason advanced for this view is that such ordinances are in excess of the powers granted to the municipal corporation.

Since E.O. No. 205, a general law, mandates that the regulation of CATV operations shall be exercised by the NTC, an LGU cannot enact an ordinance or approve a resolution in violation of the said law.

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. x x x[77] (Emphasis and underscoring supplied)

In this Petition, the Court is called upon to determine whether the control and regulation of the use of water may be made subject of a city ordinance under the regime of the Water Code — a national statute governing the same subject matter.

The Water Code governs the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources.[78] Under Article 3 thereof, water

---

[77] *Id*. at 563-564.

[78] WATER CODE, Article 2 (c).

resources are placed under the control and regulation of the government through the National Water Resources Council, now the NWRB.[79] In turn, the privilege to appropriate and use water is one which is exclusively granted and regulated by the State through water permits issued by the NWRB.[80] Once granted, these water permits continue to be valid save only for reasons spelled out under the Water Code itself.[81]

Conversely, the power to modify, suspend, cancel or revoke water permits already issued also rests with NWRB.[82]

On the other hand, the avowed purpose of the Assailed Ordinance, as stated in its whereas clauses, is the protection of

---

[79] On July 22, 1987, the National Water Resources Council was renamed and reorganized as the NWRB by virtue of Executive Order No. 124-A.

[80] WATER CODE, Article 13.

[81] The relevant provisions of the Water Code governing the grant, suspension, modification, cancellation and revocation of water permits provide:

Article 28. Water permits shall continue to be valid as long as water is beneficially used; however, it maybe suspended on the grounds of non-compliance with approved plans and specifications or schedules of water distribution; use of water for a purpose other than that for which it was granted; non-payment of water charges; wastage; failure to keep records of water diversion, when required; and violation of any term or condition of any permit or of rules and regulations promulgated by the [NWRB].

x x x x x x x x x

Article 29. Water permits may be revoked after due notice and hearing on grounds of non-use; gross violation of the conditions imposed in the permit; unauthorized sale of water; willful failure or refusal to comply with rules and regulations or any lawful order; pollution, public nuisance or acts detrimental to public health and safety; when the appropriator is found to be disqualified under the law to exploit and develop natural resources of the Philippines; when, in the case of irrigation, the land is converted to non-agricultural purposes; and other similar grounds.

Article 30. **All water permits are subject to modification or cancellation by the [NWRB], after due notice and hearing**, in favor of a project of greater beneficial use or for multi-purpose development, and a water permittee who suffers thereby shall be duly compensated by the entity or person in whose favor the cancellation was made. (Emphasis supplied)

[82] WATER CODE, Article 30.

local aquifers for the benefit of the inhabitants of Batangas City.[83] Accordingly, the Assailed Ordinance mandates all heavy industries operating along Batangas Bay to use seawater in the operation of their respective facilities, and install desalination plants for this purpose. Failure to comply with this mandatory requirement would have the effect of precluding continuous operation, and exposing non-compliant parties to penal and administrative sanctions.[84]

There is no doubt, therefore, that the Assailed Ordinance effectively contravenes the provisions of the Water Code as it arrogates unto Batangas City the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, pertains solely to the NWRB. By enacting the Assailed Ordinance, Batangas City acted in excess of the powers granted to it as an LGU, rendering the Assailed Ordinance *ultra vires*.

Being *ultra vires*, the Assailed Ordinance, in its entirety, is null and void. Thus, it becomes unnecessary to still determine if it complies with the other substantive requirements for a valid ordinance — *i.e.*, that the ordinance is fair and reasonable.

In any case, it bears emphasizing that the measure of the substantive validity of an ordinance is the underlying factual basis for which it was enacted. Hence, without factual basis, an ordinance will necessarily fail the substantive test for validity.

Batangas City's failure to prove the existence of factual basis to justify the enactment of the Assailed Ordinance had already been passed upon by the lower courts. The Court quotes, with approval, the Joint Decision of the CA Fourth Division:

> To prohibit an act or to compel something to be done, there must be a shown reason for the same. The purpose must also be cogent to the means adopted by the law to attain it. In this case, as seen in the "whereas clause," the purpose of the ordinance is to protect the

---

[83] *Rollo*, p. 24.

[84] *Id*. at 25-26.

environment and prevent ecological imbalance, especially the drying up of the aquifers of Batangas City. In effect, the drying up of aquifers is being blamed on the establishments and industries such as petitioners-appellees here. It would have been acceptable had there been a specific study or findings that the local government conducted (sic) and not just its reliance on the complaints of some constituents who merely made its conclusion that the drying up of wells or its salination was due to the "heavy industries" use of groundwater.

In addition, if appellants were convinced that those industries adversely affect the environment and specifically the water resource in Batangas City, there would be no exemptions, as provided in Section 5 of the Ordinance, as it would negate the purpose of the law.

It thus becomes apparent that the ordinance was come up with in an arbitrary manner, if not based purely on emotive or flawed premises. There was no scientific standard or any acceptable standard at all that the ordinance was based on. x x x[85]

While the Joint Decision resolves the JG Summit and First Gas appeals, these cases, pertain to the same appeal filed by Batangas City and the *Sangguniang Panlungsod* from the Decision of the RTC nullifying the Assailed Ordinance. As aptly put by the CA in the present case:

The factual antecedents and legal issues in the present CA-G.R. CV No. 90373 are identical to those of CA-G.R. CV Nos. 90324 and 90365. **The assignment of errors in the present appeal are but a restatement of the errors raised in the two consolidated appeals cases, which errors have already been exhaustively passed upon by the Court's Fourth Division in its Joint Decision dated May 28, 2009, weighing pieces of evidence that are now the very same pieces of evidence presented for consideration in this appeal.**x x x[86] (Emphasis supplied)

This Court, not being a trier of facts, accords the highest degree of respect to the findings of fact of the trial court, especially where, as here, they have been affirmed by the CA;

---

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

[86] *Id*. at 326.

accordingly, these findings will not be disturbed. To be sure, such findings are binding and conclusive upon this Court,[87] and it is not the Court's function in a petition for review on *certiorari* to examine, evaluate or weigh anew the probative value of the evidence presented before the trial court.[88]While there are recognized exceptions to this rule, the Court finds that none is present in this case.

Consequently, since it has been established that Batangas City did not have factual basis to justify the purpose of the Assailed Ordinance, Batangas City cannot invoke the presumption of validity. As held in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,[89] which Batangas City itself cites in its Petition, **the presumption of validity ascribed to an ordinance prevails only in the absence of some factual foundation of record sufficient to overthrow the assailed issuance**.[90] In this case, the presumption of validity ascribed to the Assailed Ordinance had been overturned by documentary and testimonial evidence showing that no substantial diminution in the supply of ground water in the Tabangao-Malitam watershed had occurred in the last three (3) decades, and that no threat of depletion of ground water resources in said watershed existed.[91]

Final Note

While the Assailed Ordinance has been struck down as invalid, the pronouncements hereunder should not be misconstrued by heavy industries to be *carte blanche* to abuse their respective water rights at the expense of the health and safety of the inhabitants of Batangas City, the environment within which these inhabitants live, and the resources upon which these

---

[87] *Bulos, Jr. v. Yasuma*, 554 Phil. 591, 601 (2007).

[88] *Id*.

[89] 127 Phil. 306 (1967).

[90] *Id*. at 315.

[91] *Rollo*, p. 73.

inhabitants rely. The Court recognizes fresh ground water as an invaluable natural resource, and deems it necessary to emphasize that Batangas City is not precluded from exercising its right to protect its inhabitants from injurious effects which may result from the misuse of natural water resources within its territorial jurisdiction, should these effects later arise, *provided* that such exercise is done within the framework of applicable national law, particularly, the Water Code.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated May 25, 2010 and Resolution dated December 30, 2010 of the Court of Appeals in CA-G.R. CV No. 90373 are **AFFIRMED**.

SO ORDERED.

Sereno, C. J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 196650. June 7, 2017]

SPECTRUM SECURITY SERVICES, INC., *petitioner, vs.* **DAVID GRAVE, ARIEL V. AROA, TOMASINO R. DE CHAVEZ, JR., LUCITO P. SAMARITA, SAIDOMAR M. MAROHOM, LITO V. MAHILOM and OLIVER N. MARTIN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; SECURITY OF TENURE; SECURITY GUARDS ARE ENTITLED TO SECURITY OF TENURE AND ONLY WHEN THE PERIOD OF THEIR RESERVED OR OFF-

DETAIL STATUS EXCEEDS THE REASONABLE PERIOD OF SIX MONTHS WITHOUT RE-ASSIGNMENT SHOULD THE AFFECTED SECURITY GUARDS BE REGARDED AS DISMISSED.— Security guards, like other employees in the private sector, are entitled to security of tenure. However, their situation should be differentiated from that of other employees or workers. The employment of security guards generally depends on their employers' contracts with clients who are third parties to the employment relationship, and the requirements of the latter for security services and what will be beneficial to them dictate the posting of the security guards. It is also relevant to mention that their employers retain the management prerogative to change their assignments and postings, and to decide to temporarily relieve them of their assignments. In other words, their security of tenure, though it shields them from demotions in rank or diminutions of salaries, benefits and other privileges, does not vest them with the right to their positions or assignments that will prevent their transfers or re-assignments (unless the transfers or re-assignments are motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause). Such peculiar conditions of their employment render inevitable that some of them just have to undergo periods of reserved or off-detail status that should not by any means equate to their dismissal. Only when the period of their reserved or off-detail status exceeds the reasonable period of six months without re-assignment should the affected security guards be regarded as dismissed. Indeed, there should be no indefinite lay-offs. After the period of six months, the employers should either recall the affected security guards to work or consider them permanently retrenched pursuant to the requirements of the law; otherwise, the employers would be held to have dismissed them, and would be liable for such dismissals.

2. **ID.; ID.; TERMINATION OF EMPLOYMENT; FOR THE EMPLOYER TO DISCHARGE THE BURDEN OF PROVING THAT THE DISMISSAL WAS LEGAL, THE EMPLOYEE MUST FIRST PROVE, BY SUBSTANTIAL EVIDENCE, THAT HE HAD BEEN DISMISSED FROM EMPLOYMENT.—** In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was legal. To discharge this burden, the employee

must first prove, by substantial evidence, that he had been dismissed from employment. In this case, We find otherwise. Respondents failed to properly establish that they were dismissed by the petitioner. Aside from the respondents' plain allegation that they were illegally dismissed by the petitioner, no other evidence was presented by the respondents to support their contentions.

3. **ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; ELEMENTS; DULY ESTABLISHED IN CASE AT BAR.—** The act of some of the respondents of gaining employment as security guards elsewhere constituted abandonment of their employment with the petitioner. Abandonment requires the concurrence of two elements, namely: *one*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, *two*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. Although mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment, the law requires that there be clear proof of deliberate and unjustified intent on the part of the employee to sever the employer-employee relationship. Abandonment is a matter of intention and cannot be lightly presumed from certain equivocal acts. In other words, the operative act is still the employee's ultimate act of putting an end to his employment. x x x [T]he respondents intended to sever their employer-employee relationship with the petitioner because they applied for and obtained employment with other security agencies while they were on reserved status. Their having done so constituted a clear and unequivocal intent to abandon and sever their employment with the petitioner. Thereby, the filing of their complaint for illegal dismissal was inconsistent with the established fact of their abandonment.

APPEARANCES OF COUNSEL

Claudio Gripal Requiño & Associates for petitioner.
Castro Sese & Associates Law Offices for respondents.

DECISION

BERSAMIN, *J.*:

A security guard placed on reserved or off-detail status is deemed constructively dismissed only if the status should last more than six months. Any claim of constructive dismissal must be established by clear and positive evidence.

The Case

The petitioner seeks the reversal of the decision promulgated March 1, 2011,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* and affirmed the decision of the National Labor Relations Commission (NLRC) dated March 16, 2010 finding it liable for the illegal dismissal of respondent security guards.[2]

Antecedents

The petitioner – a domestic corporation engaged in the business of providing security services – employed and posted the respondents at the premises of Ibiden Philippines, Inc. (Ibiden) located in the First Philippine Industrial Park in Sto. Tomas, Batangas. The controversy started when the petitioner implemented an action plan as part of its operational and manpower supervision enhancement program geared towards the gradual replacement of security guards at Ibiden.[3] Pursuant to the action plan, it issued separate "Notice(s) to Return to Unit" to the respondents in July and August 2008 directing them to report to its head office and to update their documents for re-assignment.[4]

---

[1] *Rollo,* pp. 38-49, penned by Associate Justice Manuel M. Barrios, concurred by Associate Justice Rosmari D. Carandang and Associate Justice Ramon R. Garcia.

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

[3] *Id.* at 40.

[4] *Id.*

On August 14, 2008, the respondents filed their complaint against the petitioner for constructive dismissal in Regional Arbitration Branch No. IV of the NLRC, claiming that the implementation of the action plan was a retaliatory measure against them for bringing several complaints[5] along with other employees of the petitioner to recover unpaid holiday pay and 13th month pay.[6] The complaints were consolidated, and a decision was later on rendered ordering the petitioner to pay to the respondents and their co-employees their unpaid entitlements corresponding to the period from October 16, 2007 to June 30, 2008.[7]

Decision of the Labor Arbiter

On May 22, 2009, Labor Arbiter Enrico Angelo C. Portillo dismissed the complaint for constructive dismissal upon finding that "there is no evidence adduced by complainants in the form of a termination letter and the like to substantiate their claim that they were indeed unceremoniously terminated by [petitioner] Spectrum."[8] He declared that the return to work notices issued by the petitioner belied the respondents' charge of illegal dismissal, opining that a security guard could be considered as having been constructively dismissed only when he had been placed on floating status for a period of more than six months.[9]

Ruling of the NLRC

Aggrieved, the respondents appealed to the NLRC.

On March 16, 2010, the NLRC reversed the Labor Arbiter's dismissal, and ordered the petitioner to reinstate the respondents with backwages. It noted that had the petitioner really intended

---

[5] The complaints were docketed as NLRC Case No. RAB-IV-06-26956-08-B; NLRC Case No. RAB IV 06-26978-08-B; and NLRC Case No. RAB IV 06-26979-08-B.

[6] *Rollo,* p. 40.

[7] *Id*.

[8] *Id*. at 129.

[9] *Id*. at 41.

to re-assign the respondents to new posts, the petitioner should have indicated in the notices the new postings or re-assignments, to wit:

It is too much coincidence that the complainants were relieved from their posts at Ibiden Phils., Inc. just sixteen days after the six of them filed a complaint for recovery of certain money claims against the respondents, and eight days after three of them filed a similar complaint against the respondents.

Moreover, if, as contended by the respondents, their intention in relieving the complainants from their posts was simply to implement a "long standing policy of re-assignment/rotation", their "Action Plan", which has the appearance of having been carefully laid out, should have provided for new assignments for the complainants. The fact [is] that it does not indicate that the respondents never intended to give the complainants new assignments. It is also too much of a coincidence that the only security guards who were affected by the respondents' "Action Plan" were the complainants.

Ordinarily, where the security guards are relieved from their posts, they are given notices informing them of their new assignments, or requiring them to explain certain charges against them. A notice directing a security guard who had just been relieved from his post to simply report to the office of the security agency is a badge of bad faith because it usually means that the security agency has no intention of giving him a new assignment Otherwise stated, the security agency has the burden of proving that the security guard who was relieved from his post for other than disciplinary reasons was actually given a new assignment Failing in this, it could only be concluded that there was an unjustified dismissal.

WHEREFORE, the decision appealed from is hereby **REVERSED.** The respondent Spectrum Security Services, Inc. is hereby ordered to **REINSTATE** the complainants, and to pay them **FULL BACKWAGES** from the dates they were relieved from their last posts up to the dates of their actual reinstatement. In addition, the said respondent is ordered to pay them ten (10%) percent of the total monetary award as attorney's fees.

For lack of employer-employee relationship, Ibiden Philippines, Inc. is hereby dropped as party-respondent herein.

SO ORDERED.[10]

The NLRC denied the motion for reconsideration of the petitioner on May 17, 2010.

Decision of the CA

The petitioner assailed the adverse ruling of the NLRC in the CA on *certiorari,* contending that the NLRC gravely abused its discretion amounting to lack or excess of its jurisdiction in arbitrarily ruling that the respondents had been illegally dismissed by the petitioner.

On March 1, 2011, the CA promulgated its assailed decision upholding the NLRC, *viz.:*

WHEREFORE, upon the foregoing, the petition is **DISMISSED.** The assailed Decision dated 17 May 2010 of the NLRC is hereby **AFFIRMED.**

SO ORDERED.[11]

The CA concluded that although the complaint for illegal dismissal was prematurely filed because six months had not yet elapsed to warrant considering the dismissal as constructive dismissal, the continued failure to give the respondents new assignments during the proceedings before the Labor Arbiter that exceeded the reasonable six-month period rendered the petitioner liable for constructive dismissal of the respondents; that the petitioner's insistence that the respondents had abandoned their employment was bereft of basis; and that abandonment as a just ground for dismissal required clear, willful, deliberate and unjustified refusal on the part of the employees to resume their employment; hence, their mere absence from work or failure to report for work even after the notice to return was not tantamount to abandonment.

---

[10] *Id*. at 102-104.

[11] *Id*. at 48.

Issue

The petitioner submits that the CA erred in finding that the petitioner was guilty of illegally dismissing the respondents despite the fact that the totality of the circumstances negated such finding.

Ruling of the Court

The appeal has merit.

The NLRC and the CA concluded that there was illegal or constructive dismissal in this case as the private respondents were not given new assignments immediately after being placed on reserved status; that the lack of any indication from the "Notices to Return to Unit" of their re-assignments was a badge of bad faith; and that the timing was off because the action plan was implemented by the petitioner after the respondents had filed the complaints for their monetary claims against the petitioner and received a favorable decision thereon.

The CA also pointed out that the petitioner's failure to provide the re-assignments or new posts for the respondents during the proceedings exceeded the reasonable six-month period of being on reserved status; hence, their off-detail became permanent.

We cannot uphold the CA.

Security guards, like other employees in the private sector, are entitled to security of tenure. However, their situation *should be* differentiated from that of other employees or workers. The employment of security guards generally depends on their employers' contracts with clients who are third parties to the employment relationship, and the requirements of the latter for security services and what will be beneficial to them dictate the posting of the security guards. It is also relevant to mention that their employers retain the management prerogative to change their assignments and postings, and to decide to temporarily relieve them of their assignments. In other words, their security of tenure, though it shields them from demotions in rank or diminutions of salaries, benefits and other privileges, does not vest them with the right to their positions or assignments that

will prevent their transfers or re-assignments (unless the transfers or re-assignments are motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause). Such peculiar conditions of their employment render inevitable that some of them just have to undergo periods of reserved or off-detail status that should not by any means equate to their dismissal. Only when the period of their reserved or off-detail status exceeds the reasonable period of six months without re-assignment should the affected security guards be regarded as dismissed.[12]

Indeed, there should be no indefinite lay-offs. After the period of six months, the employers should either recall the affected security guards to work or consider them permanently retrenched pursuant to the requirements of the law; otherwise, the employers would be held to have dismissed them, and would be liable for such dismissals.[13]

On December 18, 2001, the Department of Labor and Employment (DOLE), through Secretary Patricia A. Sto. Tomas, adopted and promulgated DOLE Department Order No. 014-01 *(Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry)* precisely to address the peculiarities of the situation of the security guards. Under DOLE Department Order No. 014-01, the tenure of security guards in their employment is ensured by guaranteeing that their services are to be terminated only for just or authorized causes expressly recognized by the *Labor Code* after due process.

Of specific relevance is that Subsection 9.3 of DOLE Department Order No. 014-01 constitutes guidelines to be

---

[12] *Salvaloza v. National Labor Relations Commission,* G.R. No. 182086, November 24, 2010, 636 SCRA 184, 197-198; *Megaforce Security and Allied Services, Inc. v. Lactao,* G.R. No. 160940, July 21, 2008, 559 SCRA 110, 116-117.

[13] *Exocet Security and Allied Services Corp. v. Serrano,* G.R. No. 198538, September 29, 2014, 737 SCRA 40, 52; *Sebuguero v. National Labor Relations Commission,* G.R. No. 115394, September 27, 1995, 248 SCRA 532, 543-544.

followed when the security guards are placed on reserved status, to wit:

> 9.3 Reserved Status — A security guard or similar personnel may be placed in a workpool or on reserved status due to lack of service assignments after expiration or termination of the service contract with the principal where he/she is assigned, or due to the temporary suspension of agency operations.
>
> No security guard or personnel can be placed in a workpool or on reserved status in any of the following situations: a) after expiration of a service contract if there are other principals where he/she can be assigned; b) as a measure to constructively dismiss the security guard; and c) as an act of retaliation for filing complaints against the employer on violations of labor laws, among others.
>
> If, after a period of 6 months, the security agency/employer cannot provide work or give an assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as prescribed in subsection 5.6.
>
> Security guards on reserved status who accept employment in other security agencies or employers before the end of the above six-month period may not be given separation pay.[14]

The respondents insist that they were constructively dismissed when they were relieved from their posts at Ibiden. However, the Labor Arbiter found that such insistence was unsupported by any factual foundation because there was no evidence showing that they had been dismissed. The finding of the Labor Arbiter is correct. The notices sent to them contained nothing from which to justly infer their having been terminated from their employment. Moreover, their complaint for illegal dismissal was even prematurely filed on August 14, 2008 because the notices[15] were sent to each of them only in the period from July 3, 2008 to August 2, 2008.

---

[14] Be it noted that later on, on February 9, 2016, the DOLE, through Secretary Rosalinda Dimapilis-Baldoz, adopted and promulgated DOLE Department Order No. 150-16 entitled *Revised Guidelines Governing the Employment and Working Conditions of Security Guards and Other Private Security Personnel in the Private Security Industry.*

[15] *Rollo,* pp. 69-82.

Nor was the CA justified to simply dismiss the right of the petitioner to implement the action plan and thereby effect the rotation and replacement of the respondents as their security guards posted at Ibiden. We have already recognized the management prerogative of the petitioner as their employer to change their postings and assignments without severing their employment relationship.[16] Although the CA might have regarded the implementation of the action plan as dubious because the petitioner had relieved the respondents from their posts at Ibiden just 16 days after they had brought their complaint for the recovery of certain money claims from the former, thereby imputing bad faith to the petitioner would be bereft of factual or legal basis considering the failure of the respondents to sufficiently establish the fact of their dismissal from their employment. In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was legal. To discharge this burden, the employee must first prove, by substantial evidence, that he had been dismissed from employment.[17] In this case, We find otherwise. Respondents failed to properly establish that they were dismissed by the petitioner. Aside from the respondents' plain allegation that they were illegally dismissed by the petitioner, no other evidence was presented by the respondents to support their contentions.

We can only uphold the Labor Arbiter's conclusion that the respondents had actually abandoned their employment and had severed their employment relationship with the petitioner themselves. Despite having been notified of the need for them to appear before the petitioner's head office to update their documents for purposes of reposting, the respondents, except Lucito P. Samarita[18] and Saidomar M. Marohom,[19] refused to

---

[16] *Nationwide Security and Allied Services, Inc. v. Valderama,* G.R. No. 186614, February 23, 2011, 644 SCRA 299, 306.

[17] *Brown Madonna Press, Inc. vs. Casas,* G.R. No. 200898, June 15, 2015, 757 SCRA 525, 537.

[18] *Rollo,* p. 85.

[19] *Id*. at 86.

receive the notices, and did not sign the same,[20] without first knowing the contents of the memo.

The petitioner sufficiently established, too, that it did not ignore the respondents, contrary to their claims. As the records bear out, one of the respondents reported to the head office but only to claim his salary and to avail himself of a loan from the Social Security System (SSS);[21] and that another respondent, Oliver Martin, albeit notified of his endorsement to a new posting with a different client company,[22] did not report to the new posting.

Furthermore, assuming *arguendo* that when respondents reported to the human resource office and the company did not provide them with new assignments at that time, the six-month period had not yet lapsed. Note that the position paper submitted by the respondents to the NLRC was only received by the NLRC on December 11,2008. The reckoning of the end of the six-month period from the supposed termination *(i.e.,* July and August 2008, the period when they were each given the "Notice to Return to Unit") would only be in January or February 2009.

Lastly, the CA erred in holding that the petitioner was guilty of providing the respondents with new assignments during the pendency of the proceedings. It appears, indeed, that by the time the respondents appealed their case in the NLRC, some of them had already gained regular employment as security guards elsewhere during their reserved status with the petitioner and prior to the lapse of the six-month period.

The new employments were indicated m their SSS employment history,[23] thusly:

---

[20] *Id*. at 128.

[21] *Id*. at 74.

[22] *Id*. at 84.

[23] *Id.* at 87-92.

Employee Name	Employment Date	Employer Name
Ariel Aroa	01-2009	Commander Security Services Inc.
Lucito Samarita	08-2008	Phoenix Security & Allied Services
Lito Mahilom	09-2008	Emirate Security Specialists
Tomasino De Chavez	09-2008	Commander Security Services Inc.
Oliver Martin Saidomar Marohom	09-2008	Sentinel Integrated Services Inc.

The act of some of the respondents of gaining employment as security guards elsewhere constituted abandonment of their employment with the petitioner. Abandonment requires the concurrence of two elements, namely: *one,* the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, *two,* there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[24] Although mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment, the law requires that there be clear proof of deliberate and unjustified intent on the part of the employee to sever the employer-employee relationship. Abandonment is a matter of intention and cannot be lightly presumed from certain equivocal acts. In other words, the operative act is still the employee's ultimate act of putting an end to his employment.[25]

Contrary to the findings of the CA, the respondents intended to sever their employer-employee relationship with the petitioner because they applied for and obtained employment with other security agencies while they were on reserved status. Their having done so constituted a clear and unequivocal intent to abandon and sever their employment with the petitioner. Thereby, the filing of their complaint for illegal dismissal was inconsistent with the established fact of their abandonment.

---

[24] *Tatel v. JLFP Investigation and Security Agency, Inc.,* G.R. No. 206942, December 9, 2015, 777 SCRA 347, 353.

[25] *Id.* at 361.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari;* **REVERSES** and **SETS ASIDE** the decision promulgated on March 1, 2011; and **REINSTATES** the decision of the Labor Arbiter dismissing the complaint for illegal dismissal.

No pronouncement on costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 198066. June 7, 2017]

YOLANDO T. BRAVO, *petitioner, vs.* **URIOS COLLEGE (NOW FATHER SATURNINO URIOS UNIVERSITY) and/or FR. JOHN CHRISTIAN U. YOUNG,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES; MISCONDUCT; WHEN SUFFICIENT TO WARRANT DISMISSAL FROM SERVICE.—** To warrant termination of employment under Article 297(a) of the Labor Code, the misconduct must be serious or "of such grave and aggravated character." Trivial and unimportant acts are not contemplated under Article 297(a) of the Labor Code. In addition, the misconduct must "relate to the performance of the employee's duties" that would render the employee "unfit to continue

working for the employer." Gambling during office hours, sexual intercourse within company premises, sexual harassment, sleeping while on duty, and contracting work in competition with the business of one's employer are among those considered as serious misconduct for which an employee's services may be terminated. Recently, this Court has emphasized that the rank-and-file employee's act must have been "performed with wrongful intent" to warrant dismissal based on serious misconduct. Dismissal is deemed too harsh a penalty to be imposed on employees who are not induced by any perverse or wrongful motive despite having committed some form of misconduct. x x x Thus, to warrant the dismissal from service of a rank-and-file employee under Article 297(a) of the Labor Code, the misconduct (1) must be serious, (2) should "relate to the performance of the employee's duties," (3) should render the employee "unfit to continue working for the employer," and (4) should "have been performed with wrongful intent."

2. **ID.; ID.; ID.; ID.; WILLFUL BREACH OF TRUST; CONDITIONS.—** [D]ue to the nature of his occupation, petitioner's employment may be terminated for willful breach of trust under Article 297(c), not Article 297(a), of the Labor Code. A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions. First, the employee whose services are to be terminated must occupy a position of trust and confidence. x x x The second condition that must be satisfied is the presence of some basis for the loss of trust and confidence. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers.

3. **ID.; ID.; POSITIONS OF TRUST AND CONFIDENCE; TYPES; THE NATURE AND SCOPE OF WORK AND NOT THE JOB OR DESIGNATION DETERMINE WHETHER AN EMPLOYEE HOLDS A POSITION OF TRUST AND CONFIDENCE.—** There are two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees. Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential

and delicate matters." On the other hand, fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians," selling tellers, and sales managers. It must be emphasized, however, that the nature and scope of work and not the job title or designation determine whether an employee holds a position of trust and confidence.

4. **ID.; ID.; TERMINATION OF EMPLOYMENT; WILLFUL BREACH OF TRUST; A LESS STRINGENT DEGREE OF PROOF IS REQUIRED IN TERMINATION CASES INVOLVING MANAGERIAL EMPLOYEES BUT EMPLOYERS MAY NOT INVOKE THE GROUND OF LOSS OF TRUST AND CONFIDENCE ARBITRARILY.—** Different rules apply in determining whether loss of trust and confidence may validly be used as a justification in termination cases. Managerial employees are treated differently than fiduciary rank-and-file employees. x x x Although a less stringent degree of proof is required in termination cases involving managerial employees, employers may not invoke the ground of loss of trust and confidence arbitrarily. The prerogative of employers in dismissing a managerial employee "must be exercised without abuse of discretion." Set against these parameters, this Court holds that petitioner was validly dismissed based on loss of trust and confidence. Petitioner was not an ordinary rank-and-file employee. His position of responsibility on delicate financial matters entailed a substantial amount of trust from respondent. x x x Petitioner's act in assigning to himself a higher salary rate without proper authorization is a clear breach of the trust and confidence reposed in him.

5. **ID.; ID.; ID.; PROCEDURAL DUE PROCESS; REQUIREMENTS.—** In termination based on just causes, the employer must comply with procedural due process by furnishing the employee a written notice containing the specific grounds or causes for dismissal. The notice must also direct the employee to submit his or her written explanation within a reasonable period from the receipt of the notice. Afterwards, the employer must give the employee ample opportunity to be heard and defend himself or herself. A hearing, however, is not a condition *sine*

qua non. A formal hearing only becomes mandatory in termination cases when so required under company rules or when the employee requests for it. x x x Any meaningful opportunity for the employee to present evidence and address the charges against him or her satisfies the requirement of ample opportunity to be heard. Finally, the employer must serve a notice informing the employee of his or her dismissal from employment.

6. **ID.; ID.; ID.; REINSTATEMENT AND BACKWAGES; RELIEFS OF AN ILLEGALLY DISMISSED EMPLOYEE. —** Under Article 294 of the Labor Code, the reliefs of an illegally dismissed employee are reinstatement and full backwages. "Backwages is a form of relief that restores the income that was lost by reason of [the employee's] dismissal" from employment. It is "computed from the time that [the employee's] compensation was withheld . . . [until] his [or her] actual reinstatement." However, when reinstatement is no longer feasible, separation pay is awarded. Considering that there was a just cause for terminating petitioner from employment, there is no basis to award him separation pay and backwages.

APPEARANCES OF COUNSEL

Libres Zulieta Jalad Ong Yiu Law Office for petitioner.
Ato Law Office for respondents.

D E C I S I O N

LEONEN, *J.*:

The employer must adduce proof of actual involvement in the alleged misconduct for loss of trust and confidence to warrant the dismissal of fiduciary rank-and-file employees. However, "mere existence of a basis for believing that [the] employee has breached the trust [and confidence] of [the] employer" is sufficient for managerial employees.[1]

---

[1] *Caoile v. National Labor Relations Commission,* 359 Phil. 399, 406 (1998) [Per *J.* Quisumbing, First Division].

Through this Petition for Review,[2] Yolando T. Bravo (Bravo) challenges the Decision[3] dated January 31, 2011 and Resolution[4] dated July 14, 2011 of the Court of Appeals in CA-G.R. SP No. 02407-MIN. The Court of Appeals reinstated the Executive Labor Arbiter's decision, which upheld petitioner's dismissal from service.[5]

Bravo was employed as a part-time teacher[6] in 1988 by Urios College, now called Father Saturnino Urios University.[7] In addition to his duties as a part-time teacher, Bravo was designated as the school's comptroller from June 1, 2002 to May 31, 2002.[8]

Urios College organized a committee to formulate a new "ranking system for non-academic employees for school year 2001–2002." The committee was composed of the Vice-President for Academic Affairs, Dr. Aldefa Yumo; the Human Resources Department Head, Atty. Josefe C. Sorrera-Ty; and the Vice-President for Administration, Dr. Wilma Balmocena. "[U]nder [the proposed ranking] system, the position of Comptroller was classified as an office [h]ead while the position of Vice-President for Finance was classified as [m]iddle [m]anagement."[9]

---

[2] *Rollo*, pp. 14-50, Petition for Review under Rule 45 of the1997 Rules of Civil Procedure as amended.

[3] *Id*. at 52-74. The Decision was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Nina G. Antonio-Valenzuela of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[4] *Id*. at 76-78. The Resolution was penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Edgardo A. Camello and Pamela Ann Abella Maxino of the Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[5] *Id*. at 73.

[6] *Id*. at 53.

[7] *Id*. at 21.

[8] *Id*.

[9] *Id*.

The proposed ranking system for school year 2001–2002 was presented to Bravo for comments.[10] Bravo recommended that "the position of Comptroller should be classified as a middle management position [because it was] . . . informally merged with . . . the position of [V]ice-[P]resident for [F]inance."[11] In addition, the Comptroller and the Vice-President for Finance performed similar functions, which included follow up of payroll preparation, verification of daily cash vouchers, and certification of checks issued by the school. Moreover, they were responsible for the control of checkbooks issuance to the Cashier, preparation of departmental budget guidelines, supervision of reports and payments to various government agencies, and analysis and interpretation of financial statements.[12] Bravo further suggested that since he assumed the duties of Comptroller and Vice-President for Finance, his salary scale should be upgraded.[13]

The committee allegedly agreed with Bravo and accepted his recommendations.[14] Bravo was then directed to arrange a salary adjustment schedule for the new ranking system.[15]

Later, Bravo obtained his employee ranking slip which showed his evaluation score and the change of his rank "from office head to middle manager-level IV."[16] The change, however, was merely superimposed. The employee ranking slip bore the signatures of the Human Resources Department Head, the Vice-President for Administration, and the President of Urios College.[17]

The implementation of the new ranking system for non-academic employees and administrators for school year 2001-

---

[10] *Id*. at 22.

[11] *Id*.

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

[13] *Id*. at 22.

[14] *Id*. at 22–23.

[15] *Id*. at 23.

[16] *Id*.

[17] *Id*. at 86.

2002 and the corresponding schedule of salary adjustments were reflected on the October 15, 2001 payroll. This was opposed by several individuals within the school.[18]

Urios College formed another committee to adopt a new ranking system for school year 2002–2003. After deliberation, the committee decided to maintain the ranking system used in the previous school year for school year 2002–2003. In the employee's ranking profile report, the position of Comptroller was classified as middle management.[19]

Meanwhile, Urios College decided to undertake a structural reorganization.[20] During this period, Bravo occupied the Comptroller position in a "hold-over" capacity until May 31, 2003. He was reappointed to the same position, which expired on May 31, 2004. Bravo was then designated as a full-time teacher[21] in the college department for school year 2004–2005.[22]

In October 2004, Urios College organized a committee to review the ranking system implemented during school year 2001–2002.[23] In its report, the committee found that the ranking system for school year 2001–2002 caused salary distortions among several employees.[24] There were also discrepancies in the salary adjustments of Bravo and of two (2) other employees, namely, Nena A. Turgo and Cherry I. Tabada.[25] The committee discovered that "the Comptroller's Office solely prepared and implemented the [s]alary [a]djustment [s]chedule" without prior approval from the Human Resources Department.[26]

---

[18] *Id*. at 23.

[19] *Id*. at 24.

[20] *Id*.

[21] *Id*. at 25.

[22] *Id*. at 155.

[23] *Id*. at 25.

[24] *Id*. at 54.

[25] *Id*. at 55-56.

[26] *Id*. at 55.

The committee recommended, among others, that Bravo be administratively charged for serious misconduct or willful breach of trust under Article 282[27] of the Labor Code.[28] Bravo allegedly misclassified several positions and miscomputed his and other employees' salaries.[29]

On March 16, 2005, Bravo received a show cause memo requiring him to explain in writing why his services should not be terminated for his alleged acts of serious misconduct:

> The committee noted a discrepancy in the Schedule of Salary Adjustments, the implementation of which was entirely based on the computation that was then the responsibility of your office (Comptroller). For this reason, you are advised to explain or show cause why your employment with Urios College will not be terminated for Serious Misconduct due to intentional misclassification/ miscomputation of your salary and some employees named hereunder, thereby causing prejudice not only to the school but also to said employees as well.
>
> 1. As Comptroller then, you belong to Office Heads classification. However, in the Schedule of Salary Adjustment, you are misclassified as Middle Manager, that resulted to overpayment in your salary by PhP 3,651.76 per month since June 2001.
>
> Also, having passed the comprehensive exam and oral defense for your master's degree, your salary adjustment based on your educational qualification ought to be is (sic) PhP 800.00 only. However, what is reflected in the Schedule of Salary Adjustment is PhP 1,000.00, which amount is appropriately given to Master's Degree holders. Considering that you have not even finished the degree up to the present, such circumstance resulted to overpayment in your salary by PhP 200.00 per month since June 2001.
>
> This means that you have been receiving a monthly salary more than what is due to you. The overpayment therefore of PhP 3,851.76 per month (PhP 3,651.76 plus PhP 200.00) from June 2001 up to February 2005 presently amounts to PhP 185,131.34.

---

[27] Renumbered as Article 297 of the Labor Code.

[28] *Rollo*, p. 56.

[29] *Id*. at 57.

2. As Community Extension Service Officer then, Mrs. Nena A. Turgo belongs to Office Heads classification. However, in the Schedule of Salary Adjustment, she was misclassified as Office Staff, which resulted to underpayment by PhP 2,888.99 on her monthly salary. From June 2001 to February 2005 the underpayment is in the total amount of PhP 140,356.76.

3. Ms. Cherry I. Tabada only passed the comprehensive examination for Master of Arts in Educational Management in Urios College. This entitled her [to] PhP 500.00 adjustment in salary due to Educational Qualification (E.Q.). However, what is reflected in the Schedule of Salary Adjustment is PhP 1,000.00, which resulted to overpayment in salary by PhP 500.00 from June 2001 to March 2003, or in the total amount of PhP 11,000.00.

The foregoing actuations would necessarily affect your character as a teacher in the Commerce Program, and as an employee of the school, whose honesty and integrity ought to be beyond reproach to serve as role model for the students in this institution.

We are therefore requesting for your written explanation relative to these matters within three (3) days from receipt of this memorandum. Documentary evidence, if there be any, [may be] attached to the written explanation. You may avail the aid of a legal counsel.

Your failure to submit your written explanation as requested will be construed as a waiver on your part, as a consequence of which the school may take such appropriate action on the bases of the available records in connection with the matters made subject of this memorandum.

For your compliance.[30]

A committee was organized to investigate the matter.[31] Hearings were conducted on April 5, 2005, April 9, 2005, and once in May 2005, after which the parties submitted their respective position papers.[32] In his Position Paper, Bravo alleged that he did not prepare the ranking system for school year 2001–

---

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

[31] *Id.* at 26.

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

2002. It was the ranking committee which categorized the position of Comptroller as middle management.[33]

The committee found that Bravo floated the idea of his salary adjustment, which Urios College never formally approved.[34] The committee also discovered an irregularity in the implementation of the ranking system for school year 2001–2002.[35] Flordeliz V. Rosero (Rosero) of the Human Resources Department attested that Bravo failed to follow the school's protocol in computing employees' salaries.[36]

According to Rosero, the Human Resources Department would prepare a summary table for each department containing the names of employees, their respective ranks, and the points they earned from their regular evaluation.[37] The accomplished summary tables were forwarded to the Comptroller's Office, which would then designate each employee's salary based on a salary scale.[38] When the ranking system for school year 2001–2002 was implemented, the Comptroller's Office prepared its own summary table,[39] which did not indicate each employee's rank or bear the signature of the Human Resources Department Head.[40]

Bravo was found guilty of serious misconduct for which he was ordered to return the sum of ₱179,319.16, representing overpayment of his monthly salary.[41] He received a copy of the investigation committee's decision on July 15, 2005.[42]

---

[33] *Id*. at 27.

[34] *Id*. at 63-64.

[35] *Id*. at 66-67.

[36] *Id*. at 65-67.

[37] *Id*. at 66.

[38] *Id*. at 66-67.

[39] *Id*.

[40] *Id*. at 67.

[41] *Id*. at 59-60.

[42] *Id*. at 59.

On July 25, 2005, Urios College notified Bravo of its decision to terminate his services[43] for serious misconduct and loss of trust and confidence.[44] Upon receipt of the termination letter, Bravo immediately filed before Executive Labor Arbiter Benjamin E. Pelaez (Executive Labor Arbiter Pelaez) a complaint for illegal dismissal with a prayer for the payment of separation pay, damages, and attorney's fees.[45]

In the Decision[46] dated December 27, 2005, Executive Labor Arbiter Pelaez dismissed the complaint for lack of merit.[47] Bravo's act of "assigning to himself an excessive and unauthorized salary rate while working as a [C]omptroller" constituted serious misconduct and willful breach of trust and confidence for which he may be dismissed.[48]

Bravo appealed the Decision of Executive Labor Arbiter Pelaez.[49] In the Resolution[50] dated January 31, 2007, the National Labor Relations Commission found that Bravo's dismissal from service was illegal. There was no clear showing that Bravo violated any school policy.[51] Moreover, Bravo received the increased salary in good faith.[52] The National Labor Relations

---

[43] *Id*. at 27.

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

[45] *Id*. at 28.

[46] *Id*. at 97-102. The Decision was penned by Executive Labor Arbiter Benjamin E. Pelaez.

[47] *Id*. at 102.

[48] *Id*. at 99-100.

[49] *Id*. at 103.

[50] *Id*. at 103-111. The Resolution, docketed as NLRC CA No. M-008932-06, was penned by Commissioner Jovito C. Cagaanan and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen of the Fifth Division, National Labor Relations Commission, Cagayan de Oro City.

[51] *Id.* at 107.

[52] *Id*. at 108.

Commission also found that Urios College "failed to afford [Bravo] the opportunity to be heard and to defend himself with the assistance of counsel."[53] Urios College was ordered to pay Bravo separation pay instead of reinstating him to his former position due to strained relations. Full backwages and attorney's fees were likewise awarded.[54]

Urios College assailed National Labor Relations Commission's Resolution dated January 31, 2007 through a petition for certiorari before the Court of Appeals.[55]

In the Decision dated January 31, 2011, the Court of Appeals reversed the National Labor Relations Commission's Resolution and reinstated the decision of Executive Labor Arbiter Pelaez.[56]

The Court of Appeals ruled that Urios College had substantial basis to dismiss Bravo from service on the ground of serious misconduct and loss of trust and confidence.[57] Bravo occupied a highly sensitive position as the school's Comptroller. "[I]n the course of his duties, [he] granted himself additional salaries" without proper authorization.[58] Rank-and-file employees may only be dismissed from service for loss of trust and confidence if the employer presents proof that the employee participated in the alleged misconduct. However, for managerial employees, it is sufficient that the employer has reasonable ground to believe that the employee is responsible for the alleged misconduct.[59]

Bravo moved for reconsideration but his motion was denied in the Resolution[60] dated July 14, 2011.

---

[53] *Id*. at 109.

[54] *Id*. at 110-111.

[55] *Id*. at 29.

[56] *Id*. at 52-74.

[57] *Id*. at 67-68.

[58] *Id*. at 68.

[59] *Id*. at 70-71.

[60] *Id*. at 76-78.

Bravo filed a Petition for Review[61] before this Court on August 31, 2011 to which respondent filed a Comment on January 6, 2012.[62] In the Resolution dated January 30, 2013, this Court gave due course to the Petition and required the parties to submit their respective memoranda.[63]

Petitioner asserts that he acted in good faith. He insists that key school officials, including the Human Resources Department Head,[64] classified the position of Comptroller as middle management.[65] Thus, he cannot be held accountable for the change in the rank of Comptroller from that of office head to middle management.[66]

Petitioner argues that suggesting an upgrade in his rank and salary cannot be considered serious misconduct.[67] He claims that he did not transgress any established rule or policy as "he was duly authorized . . . to receive the benefits of a middle[-] management employee."[68] Petitioner further argues that a dismissal based on loss of trust and confidence must rest on an actual breach of duty.[69] It may not be invoked by an employer without any factual basis.[70]

Petitioner adds that he was not given ample opportunity to be heard and defend himself.[71] Respondent refused to furnish

---

[61] *Id*. at 14.

[62] *Id*. at 146-178, Comment of Respondents on the Petition for Review.

[63] *Id*. at 181-182.

[64] *Id*. at 37.

[65] *Id.* at 39.

[66] *Id*. at 33-35.

[67] *Id*. at 41-42.

[68] *Id*. at 42.

[69] *Id*.

[70] *Id*.

[71] *Id*. at 44.

petitioner the minutes of the investigation proceedings and copies of official documents, all of which respondent had in its custody.[72] Moreover, petitioner was not given the opportunity to comment on the selection of the members of the investigating committee.[73]

On the other hand, respondent asserts that there was substantial evidence to dismiss petitioner on the ground of serious misconduct and loss of trust and confidence under the Labor Code.[74] Petitioner failed to follow regular protocol with respect to the computation of his and other employees' salaries.[75] Respondent emphasizes that petitioner occupies a highly sensitive position. Hence, his integrity should be beyond reproach.[76] Proof beyond reasonable doubt is not required in termination cases based on loss of trust and confidence[77] as long as there is reasonable ground to believe that the employee committed an act of dishonesty.[78]

Respondent contends that petitioner's right to procedural due process was not violated.[79] Petitioner was present during the hearings and was even given copies of the documents presented against him. Moreover, respondent required petitioner to submit his position paper after the investigation.[80]

The case presents the following issues for this Court's resolution:

First, whether petitioner's employment was terminated for a just cause;[81]

---

[72] *Id*.

[73] *Id*. at 26.

[74] *Id*. at 163-166.

[75] *Id*. at 163-164.

[76] *Id*. at 166.

[77] *Id*. at 170.

[78] *Id*. at 164.

[79] *Id*. at 166.

[80] *Id*. at 167.

[81] *Id*. at 36.

Second, whether petitioner was deprived of procedural due process;[82] and

Finally, whether petitioner is entitled to the payment of separation pay, backwages, and attorney's fees.[83]

Petitioner's dismissal from employment was valid.

I

Under Article 297 of the Labor Code, an employer may terminate the services of an employee for the following just causes:

> Article 297. [282] *Termination by Employer*. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

To warrant termination of employment under Article 297(a) of the Labor Code, the misconduct must be serious or "of such grave and aggravated character."[84] Trivial and unimportant acts are not contemplated under Article 297(a) of the Labor Code.[85]

---

[82] *Id*. at 44.

[83] *Id*. at 30.

[84] *Lopez v. National Labor Relations Commission,* 513 Phil. 731, 736 (2005) [Per *J*. Ynares-Santiago, First Division].

[85] *Woodridge School v. Benito*, 591 Phil. 154, 170 (2008) [Per *J*. Nachura, Third Division].

In addition, the misconduct must "relate to the performance of the employee's duties" that would render the employee "unfit to continue working for the employer."[86] Gambling during office hours,[87] sexual intercourse within company premises,[88] sexual harassment,[89] sleeping while on duty,[90] and contracting work in competition with the business of one's employer[91] are among those considered as serious misconduct for which an employee's services may be terminated.

Recently, this Court has emphasized that the rank-and-file employee's act must have been "performed with wrongful intent" to warrant dismissal based on serious misconduct.[92] Dismissal is deemed too harsh a penalty to be imposed on employees who are not induced by any perverse or wrongful motive despite having committed some form of misconduct.

---

[86] *Lopez v. National Labor Relations Commission,* 513 Phil. 737, 736 (2005) [Per *J.* Ynares-Santiago, First Division].

[87] *Universal Canning, Inc. v. Court of Appeals*, G.R. No. 215047, November 23, 2016 <sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/215047.pdf> [Per *J.* Perez, Third Division].

[88] *Imasen v. Alcon*, 746 Phil. 172 (2014) [Per *J.* Brion, Second Division].

[89] *Villarama v. National Labor Relations Commission,* 306 Phil. 310 (1994) [Per *J.* Puno, Second Division].

[90] *Tomada, Sr. v. RFM Corp.,* 615 Phil. 449 (2009) [Per *J.* Carpio, First Division].

[91] *Lopez v. National Labor Relations Commission*, 513 Phil. 731 (2005) [Per *J.* Ynares-Santiago, First Division].

[92] *Imasen v. Alcon*, 746 Phil. 172, 181 (2014) [Per *J.* Brion, Second Division]; *Universal Robina Sugar Milling Corp. v. Albay,* G.R. No. 218172, March 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/218172.pdf> 6 [Per *J.* Perlas-Bernabe, First Division]; *Gurango v. Best Chemicals and Plastics, Inc.*, 643 Phil. 520, 531 (2010) [Per *J.* Carpio, Second Division]; *Woodridge School v. Benito*, 591 Phil. 154, 170 (2008) [Per *J.* Nachura, Third Division]; *Moreno v. San Sebastian College-Recoletos,* 573 Phil. 533, 547 (2008) [Per *J.* Chico-Nazario, Third Division].

Hence, in *Moreno v. San Sebastian College-Recoletos,*[93] this Court deemed the penalty of dismissal as disproportionate to the committed offense[94] because the employee was neither induced by nor motivated by a perverse or wrongful intent in violating the school's policy on external teaching engagements.[95]

The same line of reasoning was applied in *Universal Robina Sugar Milling Corp. v. Albay*[96] wherein union members assisted the implementation of a writ of execution issued in their favor without proper authority. This Court found that the union members did not act "with intent to gain or with wrongful intent." Instead, they were impelled by their desire to collect the balance of their unpaid benefits, which the Department of Labor and Employment awarded to them.[97]

Thus, to warrant the dismissal from service of a rank-and-file employee under Article 297(a) of the Labor Code, the misconduct (1) must be serious, (2) should "relate to the performance of the employee's duties," (3) should render the employee "unfit to continue working for the employer," and (4) should "have been performed with wrongful intent."[98]

There is no evidence that the position of Comptroller was officially reclassified as middle management by respondent. Petitioner's employment ranking slip, if at all, only constituted proof of petitioner's evaluation score. It hardly represented the formal act of respondent in reclassifying the position of Comptroller. Hence, petitioner could not summarily assign to

---

[93] 573 Phil. 533 (2008) [Per *J*. Chico-Nazario, Third Division].

[94] *Id*. at 548.

[95] *Id*. at 547.

[96] G.R. No. 218172, March 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/218172.pdf> [Per *J*. Perlas-Bernabe, First Division].

[97] *Id*. at 7.

[98] *Imasen v. Alcon*, 746 Phil. 172, 181 (2014) [Per *J*. Brion, Second Division].

himself a higher salary rate without rendering himself unfit to continue working for respondent.

However, it appears that petitioner was neither induced nor motivated by any wrongful intent. He believed in good faith that respondent had accepted and approved his recommendations on the proposed ranking scale for school year 2001–2002.

Nevertheless, due to the nature of his occupation, petitioner's employment may be terminated for willful breach of trust under Article 297(c), not Article 297(a), of the Labor Code.

A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions.

First, the employee whose services are to be terminated must occupy a position of trust and confidence.[99]

There are two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees.[100] Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential and delicate matters."[101] On the other hand, fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property."[102] Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians,"[103] selling tellers,[104] and sales

---

[99] *Baguio Central University v. Gallente,* 722 Phil. 494, 505 (2013) [Per *J*. Brion, Second Division].

[100] *Id*.

[101] *Id*.

[102] *Id*.

[103] *Id*.

[104] *Manila Jockey Club, Inc. v. Trajano,* 712 Phil. 254, 268 (2013) [Per *J*. Bersamin, First Division].

managers.[105] It must be emphasized, however, that the nature and scope of work and not the job title or designation determine whether an employee holds a position of trust and confidence.[106]

The second condition that must be satisfied is the presence of some basis for the loss of trust and confidence. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence."[107] Otherwise, employees will be left at the mercy of their employers.[108]

Different rules apply in determining whether loss of trust and confidence may validly be used as a justification in termination cases. Managerial employees are treated differently than fiduciary rank-and-file employees.[109] In *Caoile v. National Labor Relations Commission*:[110]

> [W]ith 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, mere existence of a basis for believing 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

---

[105] *Lagahit v. Pacific Concord Container Lines,* G.R. No. 177680, January 13, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/177680.pdf> 12 [Per *J*. Bersamin, First Division].

[106] *Id*.

[107] *Baguio Central University v. Gallente,* 722 Phil. 494, 505 (2013) [Per *J*. Brion, Second Division].

[108] *Manila Jockey Club, Inc. v. Trajano,* 712 Phil. 254, 267 (2013) [Per *J*. Bersamin, First Division].

[109] *Caoile v. National Labor Relations Commission,* 359 Phil. 399, 406 (1998) [Per *J*. Quisumbing, First Division].

[110] *Caoile v. National Labor Relations Commission,* 359 Phil. 399 (1998) [Per *J*. Quisumbing, First Division].

responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[111] (Citations omitted)

Although a less stringent degree of proof is required in termination cases involving managerial employees, employers may not invoke the ground of loss of trust and confidence arbitrarily.[112] The prerogative of employers in dismissing a managerial employee "must be exercised without abuse of discretion."[113]

Set against these parameters, this Court holds that petitioner was validly dismissed based on loss of trust and confidence. Petitioner was not an ordinary rank-and-file employee. His position of responsibility on delicate financial matters entailed a substantial amount of trust from respondent. The entire payroll account depended on the accuracy of the classifications made by the Comptroller. It was reasonable for the employer to trust that he had basis for his computations especially with respect to his own compensation. The preparation of the payroll is a sensitive matter requiring attention to detail. Not only does the payroll involve the company's finances, it also affects the welfare of all other employees who rely on their monthly salaries.

Petitioner's act in assigning to himself a higher salary rate without proper authorization is a clear breach of the trust and confidence reposed in him. In addition, there was no reason for the Comptroller's Office to undertake the preparation of its own summary table because this was a function that exclusively pertained to the Human Resources Department. Petitioner offered no explanation about the Comptroller's Office's deviation from company procedure and the discrepancies in the computation of other employees' salaries.[114] Petitioner's

---

[111] *Id*. at 406.

[112] *Lima Land, Inc. v. Cuevas,* 635 Phil. 36, 53–54 (2010) [Per *J*. Peralta, Second Division].

[113] *Id*.

[114] *Rollo,* pp. 14-50.

position made him accountable in ensuring that the Comptroller's Office observed the company's established procedures. It was reasonable that he should be held liable by respondent on the basis of command responsibility.[115]

II

In termination based on just causes, the employer must comply with procedural due process by furnishing the employee a written notice containing the specific grounds or causes for dismissal.[116] The notice must also direct the employee to submit his or her written explanation within a reasonable period from the receipt of the notice.[117] Afterwards, the employer must give the employee ample opportunity to be heard and defend himself or herself. A hearing, however, is not a condition *sine qua non*.[118] A formal hearing only becomes mandatory in termination cases when so required under company rules or when the employee requests for it.[119]

Previously, a formal hearing was considered as an indispensable component of procedural due process in dismissal cases.[120] However, in *Perez v. Philippine Telegraph and Telephone Co.*, this Court clarified:[121]

> The test for the fair procedure guaranteed under Article 277 (b) [now, Article 292(b)] cannot be whether there has been a formal pretermination confrontation between the employer and the employee.

---

[115] See *Muaje-Tuazon v. Wenphil Corporation,* 540 Phil. 516, 526-527 (2006) [Per *J.* Quisumbing, Third Division].

[116] *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-117 (2007) [Per *J.* Velasco, Second Division].

[117] *Id*.

[118] *Perez v. Philippine Telegraph and Telephone Co.*, 602 Phil. 522, 537–538 (2009) [Per *J.* Corona, *En Banc*].

[119] *Id*. at 542.

[120] *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-118 (2007) [Per *J.* Velasco, Second Division].

[121] 602 Phil. 522 (2009) [Per *J.* Corona, *En Banc*].

The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*

. . . .

Significantly, Section 2 (d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed *"substantially",* not strictly. This is a recognition that *while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.*

An employee's right to be heard in termination cases under Article 277 (b) as implemented by Section 2 (d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

...*"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.* Therefore, while the phrase "ample opportunity to be heard" may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.[122] (Emphasis in the original, citations omitted)

Any meaningful opportunity for the employee to present evidence and address the charges against him or her satisfies the requirement of ample opportunity to be heard.[123]

Finally, the employer must serve a notice informing the employee of his or her dismissal from employment.

---

[122] *Id.* at 538-539.

[123] *Id.* at 542.

In this case, respondent complied with all the requirements of procedural due process in terminating petitioner's employment. Respondent furnished petitioner a show cause memo stating the specific grounds for dismissal. The show cause memo also required petitioner to answer the charges by submitting a written explanation.[124] Respondent even informed petitioner that he may avail the services of counsel. Respondent then conducted a thorough investigation. Three (3) hearings were conducted on separate occasions.[125] The findings of the investigation committee were then sent to petitioner.[126] Lastly, petitioner was given a notice of termination containing respondent's final decision.[127]

Ordinarily, employees play no part in selecting the members of the investigating committee. That petitioner was not given the chance to comment on the selection of the members of the investigating committee does not mean that he was deprived of due process. In addition, there is no evidence indicating that the investigating committee was biased against petitioner. Hence, there is no merit in petitioner's claim that he was deprived of due process.

Under Article 294 of the Labor Code,[128] the reliefs of an illegally dismissed employee are reinstatement and full backwages. "Backwages is a form of relief that restores the

---

[124] *Rollo*, p. 59.

[125] *Id*. at 26.

[126] *Id*. at 71.

[127] *Id*.

[128] Labor Code, Art. 294 provides: Article 294. [279] *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

income that was lost by reason of [the employee's] dismissal" from employment.[129] It is "computed from the time that [the employee's] compensation was withheld . . . [until] his [or her] actual reinstatement."[130] However, when reinstatement is no longer feasible, separation pay is awarded.[131]

Considering that there was a just cause for terminating petitioner from employment, there is no basis to award him separation pay and backwages. There are also no factual and legal bases to award attorney's fees to petitioner.

WHEREFORE, the Petition for Review is **DENIED**. The Court of Appeals' Decision dated January 31, 2011 in CA-G.R. SP No. 02407-MIN is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 198795. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MERCEDITAS MATHEUS *y* DELOS REYES,** *accused-appellant.*

---

[129] *Buhain v. Court of Appeals,* 433 Phil. 94, 102 (2002) [Per *J.* Puno, Third Division].

[130] LABOR CODE, Art. 294.

[131] *Hinatuan Mining Corp. v. National Labor Relations Commission,* 335 Phil. 1090, 1093—1094 (1997) [Per *J.* Puno, Second Division].

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.—** The offense of illegal recruitment in large scale has the following elements: (1) the person charged undertook any recruitment activity as defined under Section 6 of RA 8042; (2) accused did not have the license or the authority to lawfully engage in the recruitment of workers; and, (3) accused committed the same against three or more persons individually or as a group. These elements are obtaining in this case. *First*, the RTC found accused-appellant to have undertaken recruitment activity when she promised the private complainants overseas employment for a fee. This factual finding was affirmed by the CA. x x x *Second*, the March 1, 2004 Certification issued by the Philippine Overseas Employment Administration unmistakably reveals that the accused-appellant neither had a license nor authority to recruit workers for overseas employment. x x x *Third*, it was established that there were five complainants, i.e., Suratos, Guillarte, Alayon, Bagay, Jr., and Duldulao.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY THE TRIAL JUDGE ARE GENERALLY BINDING AND CONCLUSIVE UPON THE SUPREME COURT.—** As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. And when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court.

3. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA UNDER ARTICLE 315 (2)(a); ELEMENTS.—** The elements of estafa are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation. Here, the prosecution proved beyond reasonable doubt that accused-appellant deceived private complainants into believing that she had the authority and capability to send them abroad for employment, despite her not being licensed by the POEA to recruit workers for overseas employment. Because

of the assurances given by accused-appellant, the private complainants parted with their hard-earned money for the payment of the agreed placement fee, for which accused-appellant issued petty cash vouchers and used fictitious names evidencing her receipt of the payments.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

In this appeal, accused-appellant Merceditas Matheus y Delos Reyes assails the March 7, 2011 Decision[1] of the Court of Appeals (CA) in CA- G.R. CR. H.C. No. 03737, which affirmed the November 26, 2008 Joint Decision[2] of the Regional Trial Court (RTC), Branch 218 of Quezon City, in Criminal Case Nos. Q-03-119663-69, finding accused-appellant guilty beyond reasonable doubt of five counts of Estafa and one count of Large Scale Illegal Recruitment under Republic Act (RA) No. 8042 or the Migrant Workers and Overseas Filipino Act of 1995.

The antecedent facts are as follows:

Accused-appellant was charged with six counts of Estafa under Article 315 (2) (a) of the Revised Penal Code (RPC) and one count of Large Scale Illegal Recruitment under RA 8042, based on the affidavit-complaints made by the following: Thelma N. Suratos (Suratos); Glenda R. Guillarte (Guillarte); Merly O. Alayon (Alayon); Celso J. Bagay, Jr. (Bagay, Jr.); Rogelio Duldulao (Duldulao); and Doriza P. Gloria (Gloria).

---

[1] Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, CA *rollo*, pp. 2-30.

[2] Penned by Judge Hilario L. Laqui; *Rollo*, p. 40.

The identical Information for six counts of Estafa, save for the names of the complainants, the amounts involved, and the dates of their commission, read as follows:

Crim. Case No. Q-03-119663[3]

That on or about the period comprised from February 19, 2003 to February 26, 2003, in Quezon City, Philippines, the said accused conspiring together, personal circumstances have not as yet been ascertained and mutually helping each other, did, then and there willfully, unlawfully and feloniously defraud THELMA SURATOS y NARAG, in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which they made to Thelma Suratos to the effect that they had the power and capacity to recruit and employ Thelma Suratos for employment abroad, and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereto, and by means of other similar deceits, induced and succeeded in inducing said Thelma Suratos to give and deliver, as in fact gave and delivered to said accused the amount of ₱55,000.00, Philippine Currency, on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact they did obtain the amount of ₱55,000.00, which amount once in possession, with intent to defraud Thelma Suratos willfully, unlawfully and feloniously misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of said Thelma Suratos y Narag in the aforesaid amount of ₱55,000.00 Philippine Currency.

Crim. Case No. 0-03-119664[4]

a) Glenda R. Guillarte
b) ₱55,000.00
c) From April 1, 2003-May 13, 2003

Crim. Case No. 0-03-119665[5]

a) Merly O. Alayon
b) ₱15,000.00
c) April 10, 2003

---

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

[4] *Id*. at 3.

[5] *Id*.

Crim. Case No. Q-03-119666[6]

a) Celso J. Bagay, Jr
b) ₱30,000.00
c) June 11, 2003

Crim. Case No. Q-03-119667[7]

a) Doriza P. Gloria
b) ₱27,500.00
c) June 18, 2003

Crim. Case No. Q-03-119668[8]

a) Rogelio L. Duldulao
b) ₱29,000.00
c) January 31 - March 12, 2003.

The Information for violation of RA 8042 recited the felonious acts in this wise:

Crim. Case No. Q-03-119669[9]

That on or about the period comprised from January 31, 2003 to June 18, 2003, in Quezon City, Philippines, the said accused conspiring together, confederating with another person whose true name, identity and personal circumstances have not as yet been ascertained and mutually helping each other, by representing themselves to have the capacity to contract, enlist and recruit workers for employment abroad, did, then and there willfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement abroad to THELMA SURATOS y NARAG; GLENDA GUILLARTE y RONDILLA; MERLY ALAYON y ORO; CELSO BAGAY y JORGE, JR.; DORIZA GLORIA y PUJEDA; and ROGELIO DULDULAO y LE, without first securing the required license and authority from the Department of Labor and Employment, in violation of said law.

That the crime described above is committed in large scale as the same was perpetrated against three (3) or more persons individually or as a group.

After the pre-trial, the trial ensued.

---

[6] *Id*. at 4 & 6.

[7] *Id*. at 5.

[8] *Id.*

[9] *Id*. at 6.

On January 15, 2003, Suratos went to an office in Cubao, Quezon City where she met the accused-appellant, who promised her a job in Cyprus as a caretaker. She returned to the accused-appellant's office a month later. The accused-appellant gave her a machine copy of her visa to prove that there was a good job waiting for her in Cyprus and that she would leave in three months upon payment. Suratos gave the accused-appellant an amount totaling to PhP55,000, inclusive of her passport and medical examination report. After three months, Suratos became suspicious. She demanded the return of her money, but the accused-appellant simply told her to wait. A month later, Suratos learned that the accused-appellant was already detained and could no longer deploy her abroad. She filed a complaint for illegal recruitment docketed as Criminal Case No. Q-03-119663. Suratos identified the accused-appellant in open court as well as the entry permit and receipts she had issued her.

Sometime in the third week of March 2003, Alayon met the accused-appellant at the All Care Travel Agency located at 302 Escueta Bldg., Cubao, Quezon City. Accused-appellant offered her a job in Cyprus as a part of the laundry staff and asked her to pay the total amount of PhP55,000, to submit her résume and transcript of records, among others, and promised to deploy her abroad by June. On April 10, 2003, Alayon initially paid PhP15,000 to the accused-appellant. When she returned to accused-appellant's office to pay the balance, she learned that accused-appellant had been picked up by the police. Alayon proceeded to the police station and demanded from the accused-appellant the return of her money. She filed a complaint against accused-appellant, docketed as Criminal Case No. Q-03-119665.

During the first week of December 2012, Duldulao, through his wife's friend, was introduced to the accused-appellant. When Duldulao mentioned that she had a sister working in Spain, accused-appellant promised a tourist visa for him in exchange for PhP45,000. In the first week of January 2003, he gave the accused-appellant PhP11,000 as partial payment for the processing of his documents. The accused-appellant only took PhP10,000 and gave back PhP1,000 for him to open an account

with Land Bank, Cubao branch. Upon the request of accused-appellant, Duldulao deposited the amount of PhP8,000 to the BPI account of accused-appellant. When he was required by the accused-appellant to complete the payment of PhP45,000 for his tourist visa, Duldulao obtained a bank loan of PhP11,000 and gave it to the accused-appellant. Altogether, Duldulao paid the accused-appellant a total of PhP29,000. When he discovered that accused-appellant was arrested in April 2003, Duldulao went to Camp Panopio and demanded that accused-appellant return his money but to no avail. He subsequently filed a complaint against accused-appellant, docketed as Criminal Case No. Q-03-119668.

Bagay, Jr. went to the office of the accused-appellant who offered him a job as a dentist in London. Accused-appellant assured him that with an initial payment of PhP30,000, he would leave in three months. After paying the said amount, Bagay, Jr. gave the accused-appellant his résume, transcript of records, diploma, passport, and I.D. pictures. Unfortunately, he was not able to leave for London because in less than three months, Bagay, Jr. learned that accused-appellant was detained at Camp Panopio for illegal recruitment. Despite her promise to Bagay, Jr., accused-appellant failed to return the amount to him. The complaint filed by Bagay, Jr. against the accused-appellant was docketed as Criminal Case No. Q-03-119666.

Sometime in the third week of March 2003, Guillarte went to the office of the accused-appellant who promised her work as a hotel staff member in Cyprus. She gave accused-appellant an amount totaling PhP55,000 as full payment for her deployment abroad. But the promise of deployment never materialized. Guillarte's demand for the return of her money from the accused-appellant went unheeded. She filed a complaint against accused-appellant docketed as Criminal Case No. Q-03-119664.

Private complainant Doria, however, did not testify.

For her part, the accused-appellant admitted that she was the Overseas Marketing Director of All Care Travel & Consultancy (Hongkong), with All Care Travel & Consultancy

(Philippines) as its affiliate. She said that sometime in 1990, she was issued a professional license as an Electronics Communication Engineer. She left the country in 2003 and was not in the Philippines from January 2003 to February 2003. She returned to the country on June 4, 2003 and left the country in the same month. She claimed that she did not know Suratos, Guillarte, Alayon, Bagay, Jr., and Gloria. Although she knew Duldulao, she did not promise him any job. She likewise claimed that she neither signed nor issued any receipt using the name "Manzie delos Reyes" in favor of the complainants. She further claimed that she was not engaged in any recruitment and placement activities. During the pre-trial, she admitted that she had no license to recruit workers for overseas employment.

On rebuttal, prosecution witness Perla D. Sayana, Chief, Registration Division of the Professional Regulation Commission (PRC), testified that the name of accused-appellant, "Merceditas Matheus" does not appear in the books of PRC's database. She issued a certification to the effect that "Merceditas Matheus" is not a Licensed Electronics Communication Engineer.

Confidential agent of the Bureau of Immigration (BOI), Rustico B. Romero, whose main task was to verify travel records, also appeared for the prosecution. He testified that based on the BOI's database, the name "Merceditas Matheus" did not leave the country from January 31, 2003 to June 18, 2003.

On November 26, 2008, the RTC rendered its Decision,[10] convicting accused-appellant of the crime of large scale illegal

---

[10] WHEREFORE, the judgment is hereby rendered as follows:

A. Estafa:

1. In Crim. Case No. Q-03-119663.

The prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Merceditas D. Matheus GUILTY for Estafa punishable under Art. 315, 2 (a), RPC. She shall serve an indeterminate prison term of ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of *prision correccional* as minimum to ELEVEN (11) YEARS of *prision mayor* as maximum. The accused shall also indemnify Thelma N. Suratos for ₱55,000,00.

recruitment and five counts of estafa. The complaint docketed as Criminal Case No. Q-03-119667 filed by Doriza P. Gloria (Gloria), however, was dismissed due to Gloria's failure to testify and the prosecution's failure to prove appellant's guilt for the crime of *estafa*.

---

2. In Crim. Case No. Q-03-119664.

The prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Merceditas D. Matheus GUILTY for Estafa punishable under Art. 315, 2 (a), RPC. She shall serve an indeterminate prison term of ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of *prision correccional* as minimum to ELEVEN (11) YEARS of *prision mayor* as maximum. The accused shall also indemnify Glenda R. Guillarte for ₱55,000.00.

3. In Crim. Case No. Q-03-119665.

The prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Merceditas D. Matheus GUILTY for Estafa punishable under Art. 315,2 (a), RPC. She shall serve an indeterminate prison term of ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of *prision correccional* as minimum to SIX (6) YEARS and EIGHT (8) MONTHS of *prision mayor* as maximum. The accused shall also indemnify Merly O. Alayon for ₱15,000.00.

4. In Crim. Case No. Q-03-119666.

The prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Merceditas D. Matheus GUILTY tor Estafa punishable under Art. 315, 2 (a), RPC. She shall serve an indeterminate prison term of ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of *prision correccional* as minimum to EIGHT (8) YEARS of *prision mayor* as maximum. The accused shall also indemnify Celso Bagay for ₱30,000.00.

5. In Crim. Case No. Q-03-119667.

Private complainant Doriza P. Gloria did not testify. Hence, for failure of the prosecution to prove her guilt, the Court finds Merceditas D. Matheus NOT GUILTY of the offense charged.

6. In Crim. Case No. Q-03-119668.

The prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Merceditas D. Matheus GUILTY for Estafa punishable under Art. 315, 2 (a), RPC. She shall serve an indeterminate prison term of ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of *prision correccional* as minimum to EIGHT (8) YEARS of *prision mayor* as maximum. The accused shall also indemnify Rogelio L. Duldulao for ₱29,000.00.

On appeal before the CA, the CA affirmed the RTC's Decision.[11]

Hence, the instant appeal.

In this Court's February 6, 2012 Resolution,[12] We noted the accused-appellant and the Office of the Solicitor General's (OSG) respective Manifestations stating in essence that they are dispensing with their supplemental briefs, and thus, adopting their respective briefs which they filed with the CA.

The Issue

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF ILLEGAL RECRUITMENT AND ESTAFA.[13]

The appeal lacks merit.

On the one hand, accused-appellant maintains that she could not be held liable for the crimes of illegal recruitment and Estafa since she never made any promise or gave the impression of having the ability to send the complainants abroad. She avers that the cash vouchers and letters acknowledging receipt of complainants' payments were not signed by her, but by a certain Manzie Delos Reyes. She likewise avers that she did not engage

---

B. Illegal Recruitment:

1. In Crim. Case No. Q-03-119669.

The prosecution having established the guilt of the accused beyond reasonable doubt, the Court finds Merceditas D. Matheus GUILTY for LARGE SCALE ILLEGAL RECRUITMENT punishable under Sec. 7 (b) of R.A. 80-42. She is sentenced to suffer life imprisonment and to pay a FINE of ₱1,000,000.00.

The accused shall be credited with a period of her preventive imprisonment.

SO ORDERED.

[11] WHEREFORE, the appeal is DISMISSED. The assailed Joint Decision dated November 26, 2008 of the Regional Trial Court of Quezon City, Branch 218, is AFFIRMED in all respects.

SO ORDERED.

[12] CA *rollo*, p. 41.

[13] *Id*. at 70.

in recruitment activities as defined by law since All Care Travel & Consultancy (Philippines) is engaged in visa applications. She further avers that she did not know complainants Suratos, Guillarte, Alayon, and Bagay, Jr.

On the other hand, the OSG counters[14] that the RTC correctly convicted the accused-appellant of Large Scale Illegal Recruitment and Estafa, the prosecution having adduced sufficient evidence to establish her guilt thereof beyond reasonable doubt.

Illegal Recruitment in Large Scale –

The offense of illegal recruitment in large scale has the following elements:[15] (1) the person charged undertook any recruitment activity as defined under Section 6 of RA 8042;[16] (2) accused did not have the license or the authority to lawfully engage in the recruitment of workers; and, (3) accused committed the same against three or more persons individually or as a group.

---

[14] *Id.* at 109.

[15] *People v. Angelita I. Daud, et al.*, G.R. No. 197539, June 2, 2014.

[16] SEC. 6. Definition. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad for two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority: (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance; xxx xxx xxx (l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

These elements are obtaining in this case.

First, the RTC found accused-appellant to have undertaken recruitment activity when she promised the private complainants overseas employment for a fee. This factual finding was affirmed by the CA. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record.[17] And when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court.[18] As correctly pointed out by the CA:

> xxx xxx xxx Appellant, in fact, had stipulated at pre-trial that not only did she know private complainants, she also received money from them for their deployment abroad, as she even issued receipts to them. At any rate, absence of receipts cannot defeat a criminal prosecution for illegal recruitment.[19] Private complainants positively identified appellant as the person who asked money from them in consideration for their deployment abroad. She impressed on complainants that she had the power or ability to send them abroad for employment so much so that the latter got convinced to part with their money in exchange therefor[20] Illegal recruiters need not even expressly represent themselves to the victims as persons who have the ability to send workers abroad. It is enough that these recruiters give the impression that they have the ability to enlist workers for job placement abroad in order to induce the latter to tender payment of fees.[21]

---

[17] *People v. Ronald Credo Aka "ONTOG," Randy Credo and Rolando Credo y San Buena Ventura*, G.R. No. 197360, July 3, 2013.

[18] *People v. Apolinario Manalili y Jose*, G.R. No. 191253, August 28, 2013.

[19] *People v. Sagaydo*, 395 Phil. 538 (2000); *People v. Jamilosa*, G.R. No. 169076, January 27, 2007.

[20] *People v. Gasacao*, G.R. No. 168445, November 11, 2005.

[21] Citing the case of *People v. Ganigan*, G.R. No. 178204, August 20, 2008, 562 SCRA 741, *Rollo*, p. 26.

Second, the March 1, 2004 Certification issued by the Philippine Overseas Employment Administration unmistakably reveals that the accused-appellant neither had a license nor authority to recruit workers for overseas employment.[22] Notably, instead of assailing the certification, she admitted during the pre-trial that she did not have a license or authority to lawfully engage in recruitment and placement of workers.[23]

Third, it was established that there were five complainants, i.e., Suratos, Guillarte, Alayon, Bagay, Jr., and Duldulao.

The CA observed that:

> x x x complainants came forward and charged appellant with illegal recruitment. Appellant's claim that she never met private complainants before was belied by her own admission at pre-trial. xxx xxx xxx Private complainants' individual testimonies were so replete with details on how appellant convincingly, albeit deceptively, enticed them to pay all her demands in case, how she provided for their fake documents, and how she manipulated their thoughts and dreams for a better life, ending up in the cruel realization that she was nothing but a fraud.[24]

Indeed, the existence of the offense of illegal recruitment in large scale was duly proved by the prosecution.

Estafa under under Article 315(2)(a) of the RPC –

We likewise affirm accused-appellant's conviction for five counts of estafa under Article 315(2)(a) of the RPC. It is settled that a person, for the same acts, may be convicted separately of illegal recruitment under RA 8042 or the Labor Code, and estafa under Article 315 (2) (a) of the RPC.[25]

---

[22] *Rollo*, p. 27.

[23] CA *rollo*, p. 100.

[24] *Rollo*, p. 28.

[25] *People v. Tolentino*, G.R. No. 208686, July 1, 2015, 761 SCRA 332, 357.

The elements of estafa are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation.[26]

Here, the prosecution proved beyond reasonable doubt that accused-appellant deceived private complainants into believing that she had the authority and capability to send them abroad for employment, despite her not being licensed by the POEA to recruit workers for overseas employment. Because of the assurances given by accused-appellant, the private complainants parted with their hard-earned money for the payment of the agreed placement fee, for which accused-appellant issued petty cash vouchers and used fictitious names evidencing her receipt of the payments. As aptly pointed out by the CA:

> In this case, appellant committed estafa by using fictitious names, i.e., 'Manzie Delos Reyes', 'Manzie Matheus' in her transactions with private complainants, falsely pretending that she possessed power, influence, capacity to employ abroad or procure visas for them, making it appear that she had made transactions to acquire their entry permits and visas, thus, successfully inducing them to part with their money, albeit, knowing full [sic] well she had no authority or license to do so.[27]

Clearly, these acts of accused-appellant constitute estafa punishable under Article 315 (2)(a) of the RPC.

It must be noted, however, that both the RTC and the CA failed to award interest on the money judgment on the charge of five counts of estafa and one count of Illegal Recruitment in Large Scale. Following prevailing jurisprudence,[28] the Court, therefore, imposes a legal interest at the rate of *6% per annum*, from the time of demand, which shall be deemed as the same day the Informations were filed against appellant, until the amounts are fully paid.

---

[26] *Id*.

[27] *Id*. at 29.

[28] *People v. Tolentino*, *supra* note 25, at 361-363.

WHEREFORE, premises considered, the March 7, 2011 Decision of the Court of Appeals in CA-G.R. CR. H.C. No. 03737, which affirmed the November 26, 2008 Joint Decision of the Regional Trial Court, Branch 218 of Quezon City, in Criminal Case Nos. Q-03-119663-69, finding appellant Merceditas Matheus y Delos Reyes **GUILTY** beyond reasonable doubt of five counts of Estafa and one count of Large Scale Illegal Recruitment under R.A. No. 8042, otherwise known as Migrant Workers and Overseas Filipino Act of 1995 is hereby **AFFIRMED with MODIFICATION**, to read as follows:

1. In Criminal Case No. Q-03-119669, appellant Merceditas Matheus y Delos Reyes is found GUILTY beyond reasonable doubt of Large Scale Illegal Recruitment punishable under Sec. 7 (b) of RA 8042. She is sentenced to suffer the penalty of life imprisonment and is ordered to pay a fine of One Million Pesos (PhP1,000,000).

2. In Criminal Case No. Q-03-119663, appellant Merceditas Matheus y Delos Reyes is found GUILTY beyond reasonable doubt of *estafa*, as defined and penalized in Article 315 (2) (a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of one year, eight months and twenty-one days of *prision correccional* as minimum to eleven years of *prision mayor* as maximum. She is ordered to indemnify private complainant Thelma N. Suratos the amount of PhP55,000 as actual damages, with legal interest of 6% per *annum* from August 4, 2003, until the said amount is fully paid.

3. In Criminal Case No. Q-03-119664, appellant Merceditas Matheus y Delos Reyes is found GUILTY beyond reasonable doubt of *estafa*, as defined and penalized in Article 315 (2) (a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of one year, eight months and twenty-one days of *prision correccional* as minimum to eleven years of *prision mayor* as maximum. She is ordered to indemnify private complainant Glenda R. Guillarte in the amount of PhP55,000 as actual damages, with legal interest of 6% per *annum* from August 4, 2003, until the said amount is fully paid.

4. In Criminal Case No. Q-03-119665, appellant Merceditas Matheus y Delos Reyes is found GUILTY beyond reasonable doubt of *estafa*, as defined and penalized in Article 315 (2) (a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of one year, eight months and twenty-one days of *prision correccional* as minimum to six years and eight months of *prision mayor* as maximum. She is ordered to indemnify private complainant Merly O. Alayon in the amount of PhP15,000 as actual damages, with legal interest of 6% per *annum* from August 4, 2003, until the said amount is fully paid.

5. In Criminal Case No. Q-03-119666, appellant Merceditas Matheus y Delos Reyes is found GUILTY beyond reasonable doubt of *estafa*, as defined and penalized in Article 315 (2) (a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of one year, eight months and twenty-one days of *prision correccional* as minimum to eight years of *prision mayor* as maximum. She is ordered to indemnify private complainant Celso Bagay in the amount of PhP30,000 as actual damages, with legal interest of 6% per *annum*from August 4, 2003, until the said amount is fully paid.

6. In Criminal Case No. Q-03-119667, appellant Merceditas Matheus y Delos Reyes is found GUILTY beyond reasonable doubt of *estafa*, as defined and penalized in Article 315 (2) (a) of the Revised Penal Code. She is sentenced to suffer the indeterminate penalty of one year, eight months and twenty-one days of *prision correccional* as minimum to eight years of *prision mayor* as maximum. She is ordered to indemnify private complainant Rogelio L. Duldulao in the amount of PhP29,000 as actual damages, with legal interest of 6% per *annum* from August 4, 2003, until the said amount is fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), *Peralta,*[*] *Bersamin*, and *Reyes, JJ.*, concur.

---

[*] Designated as an additional member as per Raffle dated March 15, 2017.

SECOND DIVISION

[G.R. No. 200370. June 7, 2017]

MARIO VERIDIANO *y* SAPI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; LACK OF JURISDICTION OVER THE PERSON OF AN ACCUSED; THE INADMISSIBILITY OF THE EVIDENCE IS NOT AFFECTED WHEN AN ACCUSED FAILS TO QUESTION THE COURT'S JURISDICTION OVER HIS PERSON IN A TIMELY MANNER.—** Lack of jurisdiction over the person of an accused as a result of an invalid arrest must be raised through a motion to quash before an accused enters his or her plea. Otherwise, the objection is deemed waived and an accused is "estopped from questioning the legality of his [or her] arrest." The voluntary submission of an accused to the jurisdiction of the court and his or her active participation during trial cures any defect or irregularity that may have attended an arrest. The reason for this rule is that "the legality of an arrest affects only the jurisdiction of the court over the person of the accused." Nevertheless, failure to timely object to the illegality of an arrest does not preclude an accused from questioning the admissibility of evidence seized. The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over his or her person in a timely manner. Jurisdiction over the person of an accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.
2. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNLAWFUL SEARCHES AND SEIZURES; SEARCHES AND SEIZURES ARE UNREASONABLE UNLESS AUTHORIZED BY A VALIDLY ISSUED SEARCH WARRANT OR WARRANT OF ARREST; WARRANTLESS SEARCH, WHEN ALLOWED.—** As a component of the right to privacy, the fundamental right against unlawful searches and seizures is

guaranteed by no less than the Constitution. x x x To underscore the importance of an individual's right against unlawful searches and seizures, Article III, Section 3(2) of the Constitution considers any evidence obtained in violation of this right as inadmissible. The Constitutional guarantee does not prohibit all forms of searches and seizures. It is only directed against those that are unreasonable. Conversely, reasonable searches and seizures fall outside the scope of the prohibition and are not forbidden. In *People v. Aruta*, this Court explained that the language of the Constitution implies that "searches and seizures are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest." The requirements of a valid search warrant are laid down in Article III, Section 2 of the Constitution and reiterated in Rule 126, Section 4 of the Rules on Criminal Procedure. However, *People v. Cogaed* clarified that there are exceptional circumstances "when searches are reasonable even when warrantless." The following are recognized instances of permissible warrantless searches laid down in jurisprudence: (1) a "warrantless search incidental to a lawful arrest," (2) search of "evidence in 'plain view,'" (3) "search of a moving vehicle," (4) "consented warrantless search[es]," (5) "customs search," (6) "stop and frisk," and (7) "exigent and emergency circumstances."

3. **ID.; ID.; ID.; REASONABLE SEARCHES; WHAT CONSTITUTES A REASONABLE SEARCH IS PURELY A JUDICIAL QUESTION, THE RESOLUTION OF WHICH DEPENDS UPON THE UNIQUE AND DISTINCT FACTUAL CIRCUMSTANCES.—** There is no hard and fast rule in determining when a search and seizure is reasonable. In any given situation, "[w]hat constitutes a reasonable . . . search . . . is purely a judicial question," the resolution of which depends upon the unique and distinct factual circumstances. This may involve an inquiry into "the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured."

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH INCIDENTAL TO A LAWFUL ARREST; REQUIRES THAT A LAWFUL ARREST PRECEDES THE SEARCH.—** A search incidental to a lawful

arrest requires that there must first be a lawful arrest before a search is made. Otherwise stated, a lawful arrest must precede the search; "the process cannot be reversed." For there to be a lawful arrest, law enforcers must be armed with a valid warrant. Nevertheless, an arrest may also be effected without a warrant.

5. **ID.; ID.; ARREST; WARRANTLESS ARREST; *IN FLAGRANTE DELICTO* ARREST; ELEMENTS; FAILURE TO COMPLY WITH THE OVERT ACT TEST RENDERS AN *IN FLAGRANTE DELICTO* ARREST CONSTITUTIONALLY INFIRM.—** There are three (3) grounds that will justify a warrantless arrest x x x [, pursuant to] Rule 113, Section 5 of the Revised Rules of Criminal Procedure x x x. The first kind of warrantless arrest is known as an *in flagrante delicto* arrest. The validity of this warrantless arrest requires compliance with the overt act test as explained in *Cogaed*: "[F]or a warrantless arrest of *in flagrante delicto* to be affected, 'two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.'" Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm.

6. **ID.; ID.; ID.; ID.; HOT PURSUIT ARREST; THE LAW ENFORCERS MUST HAVE PERSONAL KNOWLEDGE OF FACTS, BASED ON THEIR OBSERVATION, THAT THE PERSON TO BE ARRESTED HAS JUST COMMITTED A CRIME.—** Rule 113, Section 5(b) of the Rules of Court pertains to a hot pursuit arrest. The rule requires that an offense has just been committed. It connotes "immediacy in point of time." That a crime was in fact committed does not automatically bring the case under this rule. An arrest under Rule 113, Section 5(b) of the Rules of Court entails a time element from the moment the crime is committed up to the point of arrest. Law enforcers need not personally witness the commission of a crime. However, they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it. x x x A hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that

the person sought to be arrested has just committed a crime. This is what gives rise to probable cause that would justify a warrantless search under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure.

7. **ID.; ID.; SEARCH AND SEIZURE; WARRANTLESS SEARCH; STOP AND FRISK SEARCH; LIMITED TO A PROTECTIVE SEARCH OF OUTER CLOTHING FOR WEAPONS AND THE LAW ENFORCERS MUST HAVE A GENUINE REASON TO BELIEVE, BASED ON THEIR EXPERIENCE AND THE PARTICULAR CIRCUMSTANCES OF EACH CASE, THAT CRIMINAL ACTIVITY MAY BE AFOOT.—** The warrantless search cannot be justified under the reasonable suspicion requirement in "stop and frisk" searches. A "stop and frisk" search is defined in *People v. Chua* as "the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband." Thus, the allowable scope of a "stop and frisk" search is limited to a "protective search of outer clothing for weapons." Although a "stop and frisk" search is a necessary law enforcement measure specifically directed towards crime prevention, there is a need to safeguard the right of individuals against unreasonable searches and seizures. Law enforcers do not have unbridled discretion in conducting "stop and frisk" searches. While probable cause is not required, a "stop and frisk" search cannot be validated on the basis of a suspicion or hunch. Law enforcers must have a genuine reason to believe, based on their experience and the particular circumstances of each case, that criminal activity may be afoot. Reliance on one (1) suspicious activity alone, or none at all, cannot produce a reasonable search.

8. **ID.; ID.; ID.; ID.; CONSENTED WARRANTLESS SEARCH; CONSENT TO A WARRANTLESS SEARCH AND SEIZURE MUST BE UNEQUIVOCAL, SPECIFIC, INTELLIGENTLY GIVEN AND UNATTENDED BY DURESS OR COERCION.—** [P]etitioner's silence or lack of resistance can hardly be considered as consent to the warrantless search. Although the right against unreasonable searches and seizures may be surrendered through a valid waiver, the prosecution must prove that the waiver was executed with clear and convincing evidence. Consent to a warrantless search

and seizure must be "unequivocal, specific, intelligently given . . . [and unattended] by duress or coercion." The validity of a consented warrantless search is determined by the totality of the circumstances. This may involve an inquiry into the environment in which the consent was given such as "the presence of coercive police procedures." Mere passive conformity or silence to the warrantless search is only an implied acquiescence, which amounts to no consent at all. x x x The presence of a coercive environment negates the claim that petitioner consented to the warrantless search.

9. **ID.; ID.; ID.; ID.; SEARCH OF A MOVING VEHICLE; LIMITED TO A VISUAL SEARCH, BUT AN EXTENSIVE SEARCH IS PERMISSIBLE WHEN IT IS FOUNDED UPON PROBABLE CAUSE.—** Another instance of a valid warrantless search is a search of a moving vehicle. The rules governing searches and seizures have been liberalized when the object of a search is a vehicle for practical purposes. Police officers cannot be expected to appear before a judge and apply for a search warrant when time is of the essence considering the efficiency of vehicles in facilitating transactions involving contraband or dangerous articles. However, the inherent mobility of vehicles cannot justify all kinds of searches. Law enforcers must act on the basis of probable cause. A checkpoint search is a variant of a search of a moving vehicle. x x x Checkpoints per se are not invalid. They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety. They are also sanctioned in cases where the government's survival is in danger. Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'" to a certain extent, they must be "conducted in a way least intrusive to motorists." The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches. x x x However, an extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause to believe that the vehicle's passengers committed a crime or when the vehicle contains instruments of an offense. Thus, routinary and indiscriminate searches of moving vehicles are allowed if they are limited to a visual search. This holds especially true when the object of the search is a public vehicle where individuals have a reasonably reduced expectation of privacy.

On the other hand, extensive searches are permissible only when they are founded upon probable cause. Any evidence obtained will be subject to the exclusionary principle under the Constitution. That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion. Although this Court has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J*.:

Through this Petition for Review on Certiorari,[1] Mario Veridiano y Sapi (Veridiano) assails the Decision[2] dated November 18, 2011 and Resolution[3] dated January 25, 2012 of the Court of Appeals in CA-G.R. CR No. 33588, which affirmed

---

[1] *Rollo,* pp. 8-29, Petition for Review on *Certiorari*.

[2] *Id*. at 31-44. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier of the Second Division, Court of Appeals, Manila.

[3] *Id*. at 46-47. The Resolution was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier of the Special Second Division, Court of Appeals, Manila.

his conviction for violation of Article II, Section 11 of Republic Act No. 9165.[4]

In an Information filed before the Regional Trial Court of San Pablo City, Laguna,[5] Veridiano was charged with the crime of illegal possession of dangerous drugs. The Information read:

> That on or about January 15, 2008, in the Municipality of Nagcarlan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being permitted or authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) small heat-sealed transparent plastic sachet containing 2.72 grams of dried marijuana leaves, a dangerous drug.
>
> CONTRARY TO LAW.[6]

On October 9, 2008, Veridiano was arraigned. He pleaded not guilty to the offense charged. Trial on the merits ensued.[7]

During trial, the prosecution presented PO1 Guillermo Cabello (PO1 Cabello) and PO1 Daniel Solano (PO1 Solano) to testify.[8]

According to the prosecution, at about 7:20 a.m. of January 15, 2008, a concerned citizen called a certain PO3 Esteves, police radio operator of the Nagcarlan Police Station, informing him that a certain alias "Baho," who was later identified as Veridiano, was on the way to San Pablo City to obtain illegal drugs.[9]

PO3 Esteves immediately relayed the information to PO1 Cabello and PO2 Alvin Vergara (PO2 Vergara) who were both on duty.[10] Chief of Police June Urquia instructed PO1 Cabello

---

[4] Comprehensive Dangerous Drugs Act (2002).

[5] *Rollo*, p. 64, Regional Trial Court Decision.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 10.

[9] *Id*.

[10] *Id*.

and PO2 Vergara to set up a checkpoint at Barangay Taytay, Nagcarlan, Laguna.[11]

The police officers at the checkpoint personally knew Veridiano. They allowed some vehicles to pass through after checking that he was not on board.[12] At around 10:00 a.m., they chanced upon Veridiano inside a passenger jeepney coming from San Pablo, Laguna.[13] They flagged down the jeepney and asked the passengers to disembark.[14] The police officers instructed the passengers to raise their t-shirts to check for possible concealed weapons and to remove the contents of their pockets.[15]

The police officers recovered from Veridiano "a tea bag containing what appeared to be marijuana."[16] PO1 Cabello confiscated the tea bag and marked it with his initials.[17] Veridiano was arrested and apprised of his constitutional rights.[18] He was then brought to the police station.[19]

At the police station, PO1 Cabello turned over the seized tea bag to PO1 Solano, who also placed his initials.[20] PO1 Solano then made a laboratory examination request, which he personally brought with the seized tea bag to the Philippine National Police Crime Laboratory.[21] The contents of the tea bag tested positive for marijuana.[22]

---

[11] *Id*.

[12] *Id*.

[13] *Id.* at 11.

[14] *Id*. at 34.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 66, Regional Trial Court Decision.

[19] *Id*. at 11.

[20] *Id*.

[21] *Id*. at 35.

[22] *Id*. at 11.

For his defense, Veridiano testified that he went to the fiesta in San Pablo City on January 15, 2008.[23] After participating in the festivities, he decided to go home and took a passenger jeepney bound for Nagcarlan.[24] At around 10:00 a.m., the jeepney passed a police checkpoint in Barangay Taytay, Nagcarlan.[25] Veridiano noticed that the jeepney was being followed by three (3) motorcycles, each with two (2) passengers in civilian attire.[26]

When the jeepney reached Barangay Buboy, Nagcarlan, the motorcyclists flagged down the jeepney.[27] Two (2) armed men boarded the jeepney and frisked Veridiano.[28] However, they found nothing on his person.[29] Still, Veridiano was accosted and brought to the police station where he was informed that "illegal drug was . . . found in his possession."[30]

In the Decision dated July 16, 2010,[31] the Regional Trial Court found Veridiano guilty beyond reasonable doubt for the crime of illegal possession of marijuana. Accordingly, he was sentenced to suffer a penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of ₱300,000.00.[32]

Veridiano appealed the decision of the trial court asserting that "he was illegally arrested."[33] He argued that the tea bag

---

[23] *Id*.

[24] *Id*.

[25] *Id.*

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*. at 11-12.

[31] *Id*. at 64-72. The Decision, docketed as Crim. Case No. 16976-SP, was penned by Presiding Judge Agripino G. Morga of Branch 32, Regional Trial Court of San Pablo City.

[32] *Id*. at 72.

[33] *Id*. at 37.

containing marijuana is "inadmissible in evidence [for] being the 'fruit of a poisonous tree.'"[34] Veridiano further argued that the police officers failed to comply with the rule on chain of custody.[35]

On the other hand, the prosecution asserted that "[t]he legality of an arrest affects only the jurisdiction of the court over [the person of the accused]."[36] Thus, by entering his plea, Veridiano waived his right to question any irregularity in his arrest.[37] With regard to the alleged illegal warrantless search conducted by the police officers, the prosecution argued that Veridiano's "submissive deportment at the time of the search" indicated that he consented to the warrantless search.[38]

On November 18, 2011, the Court of Appeals rendered a Decision[39] affirming the guilt of Veridiano.[40]

The Court of Appeals found that "Veridiano was caught *in flagrante delicto*" of having marijuana in his possession.[41] Assuming that he was illegally arrested, Veridiano waived his right to question any irregularity that may have attended his arrest when he entered his plea and submitted himself to the jurisdiction of the court.[42] Furthermore, the Court of Appeals held that Veridiano consented to the warrantless search because he did not protest when the police asked him to remove the contents of his pocket.[43]

---

[34] *Id*.

[35] *Id*. at 41.

[36] *Id*. at 88, Brief for the Plaintiff-Appellee.

[37] *Id*.

[38] *Id*.

[39] *Id*. at 31-44.

[40] *Id.* at 43.

[41] *Id*. at 37.

[42] *Id*. at 40.

[43] *Id*.

Veridiano moved for reconsideration, which was denied in the Resolution dated January 25, 2012.[44]

On March 16, 2012, Veridiano filed a Petition for Review on Certiorari.[45]

Petitioner argues that the tea bag containing marijuana leaves was seized in violation of his right against unreasonable searches and seizures.[46] He asserts that his arrest was illegal.[47] Petitioner was merely seated inside the jeepney at the time of his apprehension. He did not act in any manner that would give the police officers reasonable ground to believe that he had just committed a crime or that he was committing a crime.[48] Petitioner also asserts that reliable information is insufficient to constitute probable cause that would support a valid warrantless arrest.[49]

Since his arrest was illegal, petitioner argues that "the accompanying [warrantless] search was likewise illegal."[50] Hence, under Article III, Section 2,[51] in relation to Article III, Section 3(2)[52] of the Constitution, the seized tea bag containing

---

[44] *Id*. at 46-47.

[45] *Id*. at 8-29.

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

[47] *Id*. at 14-16.

[48] *Id*. at 16.

[49] *Id*.

[50] *Id*. at 17.

[51] CONST. Art. III, Sec. 2 provides:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[52] CONST., Art. III, Sec. 3(2) provides:

Section 3.

. . . .

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

marijuana is "inadmissible in evidence [for] being the fruit of a poisonous tree."[53]

Nevertheless, assuming that the seized tea bag containing marijuana is admissible in evidence, petitioner contends that the prosecution failed to preserve its integrity.[54] The apprehending team did not strictly comply with the rule on chain of custody under Section 21 of the Implementing Rules and Regulations of Republic Act No. 9165.[55]

In a Resolution dated June 13, 2012, this Court required respondent to file a comment on the petition.[56] In the Manifestation and Motion dated August 1, 2012,[57] respondent stated that it would no longer file a comment.

The following issues are for this Court's resolution:

First, whether there was a valid warrantless arrest;

Second, whether there was a valid warrantless search against petitioner; and

Lastly, whether there is enough evidence to sustain petitioner's conviction for illegal possession of dangerous drugs.

The Petition is granted.

I

The invalidity of an arrest leads to several consequences among which are: (a) the failure to acquire jurisdiction over the person of an accused; (b) criminal liability of law enforcers for illegal arrest; and (c) any search incident to the arrest becomes invalid thus rendering the evidence acquired as constitutionally inadmissible.

---

[53] *Rollo*, pp. 17-18.

[54] *Id*. at 19.

[55] *Id*. at 19-21.

[56] *Id*. at 106.

[57] *Id*. at 107-111, Manifestation and Motion (In Lieu of Comment).

Lack of jurisdiction over the person of an accused as a result of an invalid arrest must be raised through a motion to quash before an accused enters his or her plea. Otherwise, the objection is deemed waived and an accused is "estopped from questioning the legality of his [or her] arrest."[58]

The voluntary submission of an accused to the jurisdiction of the court and his or her active participation during trial cures any defect or irregularity that may have attended an arrest.[59] The reason for this rule is that "the legality of an arrest affects only the jurisdiction of the court over the person of the accused."[60]

Nevertheless, failure to timely object to the illegality of an arrest does not preclude an accused from questioning the admissibility of evidence seized.[61] The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over his or her person in a timely manner. Jurisdiction over the person of an accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.

---

[58] *People v. Lopez, Jr. y Mancilla*, 315 Phil. 59, 71-72 (1995) [Per *J.* Kapunan, First Division]. See *Filoteo, Jr. v. Sandiganbayan*, 331 Phil. 531, 578 (1996) [Per *J*. Panganiban, *En Banc*]; *Rebellion v. People*, 637 Phil. 339, 345 (2010) [Per *J*. Del Castillo, First Division].

[59] *People v. Lapitaje*, 445 Phil. 729, 748 (2003) [Per *J*. Austria-Martinez, *En Banc*]; *Rebellion v. People*, 637 Phil. 339, 345 (2010) [Per *J*. Del Castillo, First Division].

[60] *People v. Escordial,* 424 Phil. 627, 651-652 (2002) [Per *J*. Mendoza, *En Banc*] citing *People v. Timon*, 346 Phil. 572 (1997) [Per *J*. Panganiban, Third Division].

[61] *Homar v. People,* G.R. No. 182534, September 2, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/182534.pdf> 9 [Per *J*. Brion, Second Division]; *Sindac v. People,* G.R. No. 220732, September 6, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/220732.pdf> 10–11 [Per *J*. Perlas-Bernabe, First Division]; *People v. Racho*, 640 Phil. 669, 681 (2010) [Per *J*. Nachura, Second Division]; *People v. Martinez y Angeles*, 652 Phil. 347, 359 (2010) [Per *J*. Mendoza, Second Division]. See *Antiquera y Codes v. People*, 723 Phil. 425, 432 (2013) [Per *J*. Abad, Third Division].

As a component of the right to privacy,[62] the fundamental right against unlawful searches and seizures is guaranteed by no less than the Constitution. Article III, Section 2 of the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[63]

To underscore the importance of an individual's right against unlawful searches and seizures, Article III, Section 3(2) of the Constitution considers any evidence obtained in violation of this right as inadmissible.[64]

The Constitutional guarantee does not prohibit all forms of searches and seizures.[65] It is only directed against those that are unreasonable.[66] Conversely, reasonable searches and seizures fall outside the scope of the prohibition and are not forbidden.[67]

In *People v. Aruta,*[68] this Court explained that the language of the Constitution implies that "searches and seizures are

---

[62] *People v. Cogaed*, 740 Phil. 212, 220 (2014) [Per *J*. Leonen, Third Division].

[63] CONST., Art. III, Sec. 2.

[64] CONST., Art. III, Sec. 3(2) provides:
Section 3.
. . . .
(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[65] *People v. Aruta*, 351 Phil. 868, 878 (1998) [Per *J*. Romero, Second Division].

[66] *Id*.

[67] *Valmonte v. De Villa*, 258 Phil. 838, 843 (1989) [Per *J*. Padilla, *En Banc*].

[68] 351 Phil. 868 (1998) [Per *J*. Romero, Second Division].

normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest."[69] The requirements of a valid search warrant are laid down in Article III, Section 2 of the Constitution and reiterated in Rule 126, Section 4 of the Rules on Criminal Procedure.[70]

However, *People v. Cogaed*[71] clarified that there are exceptional circumstances "when searches are reasonable even when warrantless."[72] The following are recognized instances of permissible warrantless searches laid down in jurisprudence: (1) a "warrantless search incidental to a lawful arrest,"[73] (2) search of "evidence in 'plain view,'" (3) "search of a moving vehicle," (4) "consented warrantless search[es]," (5) "customs search," (6) "stop and frisk," and (7) "exigent and emergency circumstances."[74]

There is no hard and fast rule in determining when a search and seizure is reasonable. In any given situation, "[w]hat constitutes a reasonable . . . search . . . is purely a judicial

---

[69] *Id*. at 878.

[70] Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, Rule 126, Sec. 4 provides: Section 4. *Requisites for issuing search warrant*. – – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

[71] 740 Phil. 212 (2014) [Per *J*. Leonen, Third Division].

[72] *Id*. at 227.

[73] The Revised Rules of Criminal Procedure allows a warrantless search incidental to a lawful arrest. RULES OF COURT, Rule 126, Sec. 13 provides: Section 13. *Search incident to lawful arrest*. — A person lawfully arrested may be searched for dangerous weapons or anything that may have been used or constitute proof in the commission of an offense without a search warrant.

[74] *People v. Cogaed,* 740 Phil. 212, 228 (2014) [Per *J*. Leonen, Third Division], citing *People v. Aruta*, 351 Phil. 868, 879-880 (1998) [Per *J.* Romero, Third Division].

question," the resolution of which depends upon the unique and distinct factual circumstances.[75] This may involve an inquiry into "the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured."[76]

II

Pertinent to the resolution of this case is the determination of whether the warrantless search was incidental to a lawful arrest. The Court of Appeals concluded that petitioner was caught *in flagrante delicto* of having marijuana in his possession making the warrantless search lawful.[77]

This Court disagrees. Petitioner's warrantless arrest was unlawful.

A search incidental to a lawful arrest requires that there must first be a lawful arrest before a search is made. Otherwise stated, a lawful arrest must precede the search; "the process cannot be reversed."[78] For there to be a lawful arrest, law enforcers must be armed with a valid warrant. Nevertheless, an arrest may also be effected without a warrant.

There are three (3) grounds that will justify a warrantless arrest. Rule 113, Section 5 of the Revised Rules of Criminal Procedure provides:

Section 5. *Arrest Without Warrant*; *When Lawful*. — A peace officer or a private person may, without a warrant, arrest a person:

---

[75] *Valmonte v. De Villa*, 258 Phil. 838, 843 (1989) [Per *J*. Padilla, *En Banc*].

[76] *People v. Racho*, 640 Phil. 669, 676 (2010) [Per *J*. Nachura, Third Division] citing *People v. Nuevas*, 545 Phil. 356 (2007) [Per *J*. Tinga, Second Division].

[77] *Rollo*, p. 37.

[78] *People v. Racho*, 640 Phil. 669, 676 (2010) [Per *J*. Nachura, Second Division].

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The first kind of warrantless arrest is known as an *in flagrante delicto* arrest. The validity of this warrantless arrest requires compliance with the overt act test[79] as explained in *Cogaed*:

[F]or a warrantless arrest of *in flagrante delicto* to be affected, "two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer."[80]

Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm. In *Cogaed,* the warrantless arrest was invalidated as an *in flagrante delicto* arrest because the accused did not exhibit an overt act within the view of the police officers suggesting that he was in possession of illegal drugs at the time he was apprehended.[81]

The warrantless search in *People v. Racho*[82] was also considered unlawful.[83] The police officers received information

---

[79] See *People v. Cogaed,* 740 Phil. 212, 238 (2014) [Per *J*. Leonen, Third Division].

[80] *Id*. citing *People v. Chua* , 444 Phil. 757 (2003) [Per *J*. Ynares-Santiago, First Division].

[81] *Id.* at 238-239.

[82] 640 Phil. 669 (2010) [Per *J*. Nachura, Second Division].

[83] *Id*. at 679-680.

that a man was in possession of illegal drugs and was on board a Genesis bus bound for Baler, Aurora. The informant added that the man was "wearing a red and white striped [t]-shirt."[84] The police officers waited for the bus along the national highway.[85] When the bus arrived, Jack Racho (Racho) disembarked and waited along the highway for a tricycle.[86] Suddenly, the police officers approached him and invited him to the police station since he was suspected of having shabu in his possession.[87] As Racho pulled out his hands from his pocket, a white envelope fell yielding a sachet of shabu.[88]

In holding that the warrantless search was invalid, this Court observed that Racho was not "committing a crime in the presence of the police officers" at the time he was apprehended.[89] Moreover, Racho's arrest was solely based on a tip.[90] Although there are cases stating that reliable information is sufficient to justify a warrantless search incidental to a lawful arrest, they were covered under the other exceptions to the rule on warrantless searches.[91]

Rule 113, Section 5(b) of the Rules of Court pertains to a hot pursuit arrest.[92] The rule requires that an offense has just

---

[84] *Id*. at 671-672.

[85] *Id*. at 672.

[86] *Id*.

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id*. at 667.

[91] *Id*. This Court cited *People v. Maspil, Jr*., 266 Phil. 815 (1990) [*J.* Gutierrez, Jr., Third Division]; *People v. Bagista*, 288 Phil. 828 (1992) [*J.* Nocon, Second Division]; *People v. Balingan*, 311 Phil. 290 (1995) [*J.* Puno, Second Division]; *People v. Lising*, 341 Phil. 801 (1997) [Per *J.* Melo, Third Division]; and *People v. Montilla*, 349 Phil. 640 (1998) [Per *J.* Regalado, *En Banc*].

[92] *Malacat v. Court of Appeals,* 347 Phil. 462, 479 (1997) [Per *J*. Davide, *En Banc*].

been committed. It connotes "immediacy in point of time."[93] That a crime was in fact committed does not automatically bring the case under this rule.[94] An arrest under Rule 113, Section 5(b) of the Rules of Court entails a time element from the moment the crime is committed up to the point of arrest.

Law enforcers need not personally witness the commission of a crime. However, they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it.

People v. Gerente[95] illustrates a valid arrest under Rule 113, Section 5(b) of the Rules of Court. In *Gerente,* the accused was convicted for murder and for violation of Republic Act No. 6425.[96] He assailed the admissibility of dried marijuana leaves as evidence on the ground that they were allegedly seized from him pursuant to a warrantless arrest.[97] On appeal, the accused's conviction was affirmed.[98] This Court ruled that the warrantless arrest was justified under Rule 113, Section 5(b) of the Rules of Court. The police officers had personal knowledge of facts and circumstances indicating that the accused killed the victim:

> *The policemen arrested Gerente only some three (3) hours after Gerente and his companions had killed Blace*. They saw Blace dead in the hospital and when they inspected the scene of the crime, they found the instruments of death: a piece of wood and a concrete hollow block which the killers had used to bludgeon him to death. The eye-witness, Edna Edwina Reyes, reported the happening to the policemen

---

[93] *In re Salibo v. Warden,* 757 Phil. 630, 656 (2015) [Per *J.* Leonen, Second Division] citing the Dissenting Opinion of *J.* Teehankee in *Ilagan v. Enrile*, 223 Phil. 561 (1985) [Per *J.* Melencio-Herrera, *En Banc*].

[94] *Id*.

[95] 292-A Phil. 34 (1993) [Per *J*. Griño-Aquino, First Division].

[96] *Id*. at 39.

[97] *Id*.

[98] *Id.*

and pinpointed her neighbor, Gerente, as one of the killers. *Under those circumstances, since the policemen had personal knowledge of the violent death of Blace and of facts indicating that Gerente and two others had killed him, they could lawfully arrest Gerente without a warrant.* If they had postponed his arrest until they could obtain a warrant, he would have fled the law as his two companions did.[99] (Emphasis supplied)

The requirement that law enforcers must have personal knowledge of facts surrounding the commission of an offense was underscored in *In Re Salibo v. Warden.*[100]

In Re Salibo involved a petition for habeas corpus. The police officers suspected Datukan Salibo (Salibo) as one (1) of the accused in the Maguindano Massacre.[101] Salibo presented himself before the authorities to clear his name. Despite his explanation, Salibo was apprehended and detained.[102] In granting the petition, this Court pointed out that Salibo was not restrained under a lawful court process or order.[103] Furthermore, he was not arrested pursuant to a valid warrantless arrest:[104]

It is undisputed that petitioner Salibo presented himself before the Datu Hofer Police Station to clear his name and to prove that he is not the accused Butukan S. Malang. When petitioner Salibo was in the presence of the police officers of Datu Hofer Police Station, he was neither committing nor attempting to commit an offense. *The police officers had no personal knowledge of any offense that he might have committed.* Petitioner Salibo was also not an escapee prisoner.[105] (Emphasis supplied)

In this case, petitioner's arrest could not be justified as an *in flagrante delicto* arrest under Rule 113, Section 5(a) of the

[99] *Id*. at 40.

[100] 757 Phil. 630 (2015) [Per *J*. Leonen, Second Division].

[101] *Id*. at 634-635.

[102] *Id.* at 635.

[103] *Id*. at 654–655.

[104] *Id*.

[105] *Id*. at 655.

Rules of Court. He was not committing a crime at the checkpoint. Petitioner was merely a passenger who did not exhibit any unusual conduct in the presence of the law enforcers that would incite suspicion. In effecting the warrantless arrest, the police officers relied solely on the tip they received. Reliable information alone is insufficient to support a warrantless arrest absent any overt act from the person to be arrested indicating that a crime has just been committed, was being committed, or is about to be committed.[106]

The warrantless arrest cannot likewise be justified under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure. The law enforcers had no personal knowledge of any fact or circumstance indicating that petitioner had just committed an offense.

A hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that the person sought to be arrested has just committed a crime. This is what gives rise to probable cause that would justify a warrantless search under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure.

III

The warrantless search cannot be justified under the reasonable suspicion requirement in "stop and frisk" searches.

A "stop and frisk" search is defined in *People v. Chua*[107] as "the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband."[108] Thus, the allowable scope of a "stop and frisk" search is limited to a "protective search of outer clothing for weapons."[109]

---

[106] *People v. Tudtud*, 458 Phil. 752, 773 (2003) [Per *J*. Tinga, Second Division]; *People v. Nuevas*, 545 Phil. 356, 371–372 (2007) [Per *J*. Tinga, Second Division]; *People v. Racho*, 640 Phil. 669, 678 (2010) [Per *J*. Nachura, Second Division].

[107] 444 Phil. 757 (2003) [Per *J*. Ynares-Santiago, First Division].

[108] *Id*. at 773-774.

[109] *Malacat v. Court of Appeals*, 347 Phil. 462, 480 (1997) [Per *J*. Davide, Jr., *En Banc*].

Although a "stop and frisk" search is a necessary law enforcement measure specifically directed towards crime prevention, there is a need to safeguard the right of individuals against unreasonable searches and seizures.[110]

Law enforcers do not have unbridled discretion in conducting "stop and frisk" searches. While probable cause is not required, a "stop and frisk" search cannot be validated on the basis of a suspicion or hunch.[111] Law enforcers must have a genuine reason to believe, based on their experience and the particular circumstances of each case, that criminal activity may be afoot.[112] Reliance on one (1) suspicious activity alone, or none at all, cannot produce a reasonable search.[113]

In *Manalili v. Court of Appeals,*[114] the police officers conducted surveillance operations in Caloocan City Cemetery, a place reportedly frequented by drug addicts.[115] They chanced upon a male person who had "reddish eyes and [was] walking in a swaying manner."[116] Suspecting that the man was high on drugs, the police officers approached him, introduced themselves, and asked him what he was holding.[117] However, the man resisted.[118] Upon further investigation, the police officers found marijuana in the man's possession.[119] This Court held that the circumstances

---

[110] *People v. Cogaed,* 740 Phil. 212, 232 (2014) [Per *J*. Leonen, Third Division].

[111] *Malacat v. Court of Appeals,* 347 Phil. 462, 481 (1997) [Per *J*. Davide, Jr., *En Banc*].

[112] *Id*.

[113] *People v. Cogaed,* 740 Phil. 212, 233 (2014) [Per *J*. Leonen, Third Division] citing *J*. Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577 (2010) [Per *J.* Carpio Morales, Third Division].

[114] 345 Phil. 632 (1997) [Per *J*. Panganiban, Third Division].

[115] *Id*. at 638.

[116] *Id.*

[117] *Id*.

[118] *Id*.

[119] *Id.*

of the case gave the police officers justifiable reason to stop the man and investigate if he was high on drugs.[120]

In *People v. Solayao*,[121] the police officers were conducting an intelligence patrol to verify reports on the presence of armed persons within Caibiran.[122] They met a group of drunk men, one (1) of whom was the accused in a camouflage uniform.[123] When the police officers approached, his companions fled leaving behind the accused who was told not to run away.[124] One (1) of the police officers introduced himself and seized from the accused a firearm wrapped in dry coconut leaves.[125] This Court likewise found justifiable reason to stop and frisk the accused when "his companions fled upon seeing the government agents."[126]

The "stop and frisk" searches in these two (2) cases were considered valid because the accused in both cases exhibited overt acts that gave law enforcers genuine reason to conduct a "stop and frisk" search. In contrast with *Manalili* and *Solayao*, the warrantless search in *Cogaed*[127] was considered as an invalid "stop and frisk" search because of the absence of a single suspicious circumstance that would justify a warrantless search.

In *Cogaed,* the police officers received information that a certain Marvin Buya would be transporting marijuana.[128] A passenger jeepney passed through the checkpoint set up by the police officers. The driver then disembarked and signaled that

---

[120] *Id*. at 647.

[121] 330 Phil. 811 (1996) [Per *J*. Romero, Second Division].

[122] *Id*. at 814-815.

[123] *Id*. at 815.

[124] *Id*.

[125] *Id*.

[126] *Id*. at 819.

[127] 740 Phil. 212 (2014) [Per *J*. Leonen, Third Division].

[128] *Id*. at 221.

two (2) male passengers were carrying marijuana.[129] The police officers approached the two (2) men, who were later identified as Victor Cogaed (Cogaed) and Santiago Dayao, and inquired about the contents of their bags.[130]

Upon further investigation, the police officers discovered three (3) bricks of marijuana in Cogaed's bag.[131] In holding that the "stop and frisk" search was invalid, this Court reasoned that "[t]here was not a single suspicious circumstance" that gave the police officers genuine reason to stop the two (2) men and search their belongings.[132] Cogaed did not exhibit any overt act indicating that he was in possession of marijuana.[133]

Similar to *Cogaed,* petitioner in this case was a mere passenger in a jeepney who did not exhibit any act that would give police officers reasonable suspicion to believe that he had drugs in his possession. Reasonable persons will act in a nervous manner in any check point. There was no evidence to show that the police had basis or personal knowledge that would reasonably allow them to infer anything suspicious.

IV

Moreover, petitioner's silence or lack of resistance can hardly be considered as consent to the warrantless search. Although the right against unreasonable searches and seizures may be surrendered through a valid waiver, the prosecution must prove that the waiver was executed with clear and convincing evidence.[134] Consent to a warrantless search and seizure must

---

[129] *Id*.

[130] *Id*.

[131] *Id.* at 221-222.

[132] *Id.* at 234.

[133] *Id*. at 45236-237.

[134] *Caballes v. Court of Appeals,* 424 Phil. 263, 286 (2002) [Per *J*. Puno, First Division].

be "unequivocal, specific, intelligently given . . . [and unattended] by duress or coercion."[135]

The validity of a consented warrantless search is determined by the totality of the circumstances.[136] This may involve an inquiry into the environment in which the consent was given such as "the presence of coercive police procedures."[137]

Mere passive conformity or silence to the warrantless search is only an implied acquiescence, which amounts to no consent at all.[138] In *Cogaed,* this Court observed:

> Cogaed's silence or lack of aggressive objection was a natural reaction to a coercive environment brought about by the police officer's excessive intrusion into his private space. The prosecution and the police carry the burden of showing that the waiver of a constitutional right is one which is knowing, intelligent, and free from any coercion. In all cases, such waivers are not to be presumed.[139]

The presence of a coercive environment negates the claim that petitioner consented to the warrantless search.

V

Another instance of a valid warrantless search is a search of a moving vehicle. The rules governing searches and seizures have been liberalized when the object of a search is a vehicle for practical purposes.[140] Police officers cannot be expected to

---

[135] *Id*. See also *People v. Nuevas*, 545 Phil. 356, 373 (2007) [Per *J.* Tinga, Second Division].

[136] *Id*.

[137] *Id.*

[138] See *Caballes v. Court of Appeals,* 424 Phil. 263, 285 (2002) [Per *J.* Puno, First Division]; *People v. Cogaed*, 740 Phil. 212, 239-240 (2014) [Per *J.* Leonen, Third Division].

[139] *People v. Cogaed,* 740 Phil. 212, 239 (2014) [Per *J*. Leonen, Third Division].

[140] *Caballes v. Court of Appeals,* 424 Phil. 263, 278 (2002) [Per *J*. Puno, First Division].

appear before a judge and apply for a search warrant when time is of the essence considering the efficiency of vehicles in facilitating transactions involving contraband or dangerous articles.[141] However, the inherent mobility of vehicles cannot justify all kinds of searches.[142] Law enforcers must act on the basis of probable cause.[143]

A checkpoint search is a variant of a search of a moving vehicle.[144] Due to the number of cases involving warrantless searches in checkpoints and for the guidance of law enforcers, it is imperative to discuss the parameters by which searches in checkpoints should be conducted.

Checkpoints per se are not invalid.[145] They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety.[146] They are also sanctioned in cases where the government's survival is in danger.[147] Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'"[148] to a certain extent, they must be "conducted in a way least intrusive to motorists."[149] The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches.[150]

---

[141] *Id.*

[142] *Id*. at 279.

[143] *Id*.

[144] See *People v. Manago*, G.R. No. 212340, August 17, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/212340.pdf> 9 [Per *J*. Perlas-Bernabe, First Division].

[145] *Valmonte v. De Villa,* 264 Phil. 265, 269 (1990) [Per *J.* Padilla, *En Banc*].

[146] *Id.*

[147] *Id*.

[148] *Id*. at 270.

[149] *People v. Vinecario,* 465 Phil. 192, 206 (2004) [Per *J.* Carpio Morales, Third Division].

[150] *People v. Manago*, G.R. No. 212340, August 17, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/212340.pdf> 10 [Per *J*. Perlas-Bernabe, First Division].

In *Valmonte v. De Villa,*[151] this Court clarified that "[f]or as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search[es]."[152] Thus, a search where an "officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds, or simply looks into a vehicle, or flashes a light therein" is not unreasonable.[153]

However, an extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause to believe that the vehicle's passengers committed a crime or when the vehicle contains instruments of an offense.[154]

Thus, routinary and indiscriminate searches of moving vehicles are allowed if they are limited to a visual search. This holds especially true when the object of the search is a public vehicle where individuals have a reasonably reduced expectation of privacy. On the other hand, extensive searches are permissible only when they are founded upon probable cause. Any evidence obtained will be subject to the exclusionary principle under the Constitution.

That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.

---

[151] 264 Phil. 265 (1990) [Per *J*. Padilla, *En Banc*].

[152] *Id*. at 270.

[153] *Valmonte v. De Villa,* 258 Phil. 838, 843 (1989) [Per *J*. Padilla, *En Banc*].

[154] *Valmonte v. De Villa,* 264 Phil. 265, 271 (1990) [Per *J*. Padilla, *En Banc*]. See *People v. Vinecario*, 465 Phil. 192 (2004) [Per *J*. Carpio Morales, Third Division].

Although this Court has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

In *People v. Breis*,[155] apart from the tipped information they received, the law enforcement agents observed suspicious behavior on the part of the accused that gave them reasonable ground to believe that a crime was being committed.[156] The accused attempted to alight from the bus after the law enforcers introduced themselves and inquired about the ownership of a box which the accused had in their possession.[157] In their attempt to leave the bus, one (1) of the accused physically pushed a law enforcer out of the way.[158] Immediately alighting from a bus that had just left the terminal and leaving one's belongings behind is unusual conduct.[159]

In *People v. Mariacos,*[160] a police officer received information that a bag containing illegal drugs was about to be transported on a passenger jeepney.[161] The bag was marked with "O.K."[162] On the basis of the tip, a police officer conducted surveillance operations on board a jeepney.[163] Upon seeing the bag described to him, he peeked inside and smelled the distinct odor of marijuana emanating from the bag.[164] The tipped information and the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.[165]

---

[155] 767 Phil. 40 (2015) [Per *J.* Carpio, Second Division].

[156] *Id.* at 62-65.

[157] *Id*.

[158] *Id*. at 65.

[159] *Id*. at 64.

[160] 635 Phil. 315 (2010) [Per *J.* Nachura, Second Division].

[161] *Id*. 322-323.

[162] *Id.*

[163] *Id*.

[164] *Id*. at 325.

[165] *Id*. at 331.

The police officers in *People v. Ayangao*[166] and *People v. Libnao*[167] likewise received tipped information regarding the transport of illegal drugs. In *Libnao*, the police officers had probable cause to arrest the accused based on their three (3)-month long surveillance operation in the area where the accused was arrested.[168] On the other hand, in *Ayangao*, the police officers noticed marijuana leaves protruding through a hole in one (1) of the sacks carried by the accused.[169]

In the present case, the extensive search conducted by the police officers exceeded the allowable limits of warrantless searches. They had no probable cause to believe that the accused violated any law except for the tip they received. They did not observe any peculiar activity from the accused that may either arouse their suspicion or verify the tip. Moreover, the search was flawed at its inception. The checkpoint was set up to target the arrest of the accused.

There are different hybrids of reasonable warrantless searches. There are searches based on reasonable suspicion as in *Posadas v. Court of Appeals*[170] where this Court justified the warrantless search of the accused who attempted to flee with a *buri* bag after the police officers identified themselves.[171]

On the other hand, there are reasonable searches because of heightened security. In *Dela Cruz v. People,*[172] the search conducted on the accused was considered valid because it was done in accordance with routine security measures in ports.[173]

---

[166] 471 Phil. 379 (2004) [Per *J*. Corona, Third Division].

[167] 443 Phil. 506 (2003) [Per *J*. Puno, Third Division].

[168] *Id*. at 517.

[169] 471 Phil. 379, 384 (2004) [Per *J*. Corona, Third Division].

[170] 266 Phil. 306 (1990) [Per *J*. Gancayo, First Division].

[171] *Id*. at 307-312.

[172] G.R. No. 209387, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209387.pdf> [Per *J*. Leonen, Second Division].

[173] *Id*. at 22.

This case, however, should not be construed to apply to border searches. Border searches are not unreasonable per se;[174] there is a "reasonable reduced expectation of privacy" when travellers pass through or stop at airports or other ports of travel.[175]

The warrantless search conducted by the police officers is invalid. Consequently, the tea bag containing marijuana seized from petitioner is rendered inadmissible under the exclusionary principle in Article III, Section 3(2) of the Constitution. There being no evidence to support his conviction, petitioner must be acquitted.

WHEREFORE, the Decision dated July 16, 2010 of the Regional Trial Court in Criminal Case No. 16976-SP and the Decision dated November 18, 2011 and Resolution dated January 25, 2012 of the Court of Appeals in CA-G.R. CR. No. 33588 are **REVERSED** and **SET ASIDE**. Petitioner Mario Veridiano y Sapi is hereby **ACQUITTED** and is ordered immediately **RELEASED** from confinement unless he is being held for some other lawful cause.

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

---

[174] *Dela Cruz v. People,* G.R. No. 209387, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209387.pdf> 16 [Per *J.* Leonen, Second Division].

[175] *Id.* at 17.

SECOND DIVISION

[G.R. No. 200512. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELMER AVANCENA *y* CABANELA, JAIME POPIOCO *y* CAMBAYA**[1] **and NOLASCO TAYTAY *y* CRUZ,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING FOR RANSOM; ELEMENTS.—** In kidnapping for ransom, the prosecution must be able to establish the following elements: "[*first*,] the accused was a private person; [*second*,] he [or she] kidnapped or detained or in any manner deprived another of his or her liberty; [*third*,] the kidnapping or detention was illegal; and [*fourth*,] the victim was kidnapped or detained for ransom."
2. **ID.; ID.; KIDNAPPING; TO BE PROVEN, THE PROSECUTION MUST ESTABLISH THAT THE ACCUSED INTENDED TO DEPRIVE THE VICTIM OF HIS LIBERTY.—** In order to prove kidnapping, the prosecution must establish that the victim was "forcefully transported, locked up or restrained." It must be proven that the accused intended "to deprive the victim of his liberty." The act of handcuffing Rizaldo and physically harming him to prevent escape falls under this definition. Accused-appellants, however, claim that Rizaldo was not kidnapped because he voluntarily went with the accused-appellants. [T]he fact that the victim voluntarily went with the accused [does] not remove the element of deprivation of liberty [if] the victim went with the accused on a false inducement without which the victim would not have done so." Rizaldo would not have gone with the accused-appellants had they not misrepresented themselves as Philippine Drug Enforcement Agency agents who allegedly caught him selling illegal drugs.

---

[1] Accused-appellants Elmer Avanceña y Cabanela and Jaime Popioco *y* Cambaya are also referred to in the *Rollo* and CA *rollo* as "Elmer Avanceña" and "Jaime Procopio."

3. **ID.; ID.; ROBBERY; ELEMENTS; TAKING IS CONSIDERED COMPLETE FROM THE MOMENT THE OFFENDER GAINS POSSESSION OF THE THING, EVEN IF HE HAS NO OPPORTUNITY TO DISPOSE OF THE THING.—** The elements of simple robbery are "a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things." x x x "Taking is considered complete from the moment the offender gains possession of the thing, even if [the offender] has no opportunity to dispose of the [thing]."

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Amelia S. Tansinsin for accused-appellants.

D E C I S I O N

LEONEN, *J*.:

This is an appeal from the Decision dated September 17, 2010[2] of the Court of Appeals in CA-G.R. CR-HC No. 03928 affirming the Joint Decision dated December 22, 2008[3] and Order dated March 5, 2009[4] of Branch 62, Regional Trial Court of Makati City. The assailed judgments found Elmer Avancena y Cabanela (Avancena), Jaime Popioco y Cambaya (Popioco), and Nolasco Taytay y Cruz (Taytay) guilty of kidnapping with serious illegal detention and robbery.

---

[2] *Rollo,* pp. 2-30. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias of the Second Division, Court of Appeals, Manila.

[3] CA *rollo,* pp. 84-103. The Joint Decision, docketed as Criminal Case No. 04-2817-18, was penned by Judge Selma Palacio Alaras.

[4] *Id*. at 104-105. The Order was penned by Judge Selma Palacio Alaras.

On August 10, 2004, two (2) Informations were filed charging Avancena, Popioco, Taytay, Generoso Jaymalin y Conde (Jaymalin), Eric Nazareno y Bonita (Nazareno), and Gil Grefaldeo y Lasin (Grefaldeo) with the crimes of Kidnapping for Ransom and Robbery/Extortion.[5] The Informations were subsequently amended on February 28, 2005 to exclude Jaymalin and Grefaldeo.[6] The Amended Informations read:

Crim. Case No. 04-2817

That on or about August 1, 2004 in Barangay Bangkal, Makati City and within the jurisdiction of this Honorable Court, the above-named accused, being then private individuals and armed with handguns, conspiring, confederating and mutually helping one another, did then and there, with the use of force, threat, violence and intimidation, willfully, unlawfully and feloniously take, kidnap and deprive Rizaldo Policarpio y Legaspi of his liberty against his will for purposes of extorting money in the amount of One Hundred Fifty Thousand (₱150,000.00) as a condition for his release; That said Rizaldo Policarpio y Legaspi was in fact only released after he was illegally detained for almost seven hours and after his father had paid the amount of Four Thousand Pesos (₱4,000.00) to the accused to the damage and prejudice of Rizaldo Policarpio y Legaspi in whatever amounts that may be awarded him under the provisions of the New Civil Code.

CONTRARY TO LAW.[7]

Crim. Case No. 04-2818

That on or about August 9, 2004 along Evangelista St., Barangay Bangkal, Makati City and within the jurisdiction of this Honorable Court, the above-named accused, then armed with handguns, conspiring, confederating and mutually helping one another, with intent of gain, did then and there, by means of threat and intimidation, willfully, unlawfully and feloniously take from Alfonso Policarpio the amount of SIX THOUSAND PESOS (₱6,000.00) against his will

---

[5] *Id*. at 10-13.

[6] *Id*. at 41. The amended informations were the result of a reinvestigation conducted by the Department of Justice. *See* RTC Joint Decision, p. 2.

[7] *Id*. at 14.

and to the damage and prejudice of said Alfonso Policarpio in whatever amounts that may be awarded him under the provisions of the New Civil Code.

CONTRARY TO LAW.[8]

On April 26, 2005, Avancena, Popioco, Nazareno, and Taytay were arraigned where they entered the plea of not guilty. Trial on the merits ensued.[9]

Rizaldo Policarpio (Rizaldo) testified that at around 12:30 a.m. of August 1, 2004, "he went to [a] 7/11 convenience store located at the corner of Evangelista St., Pasay City to buy [a] sandwich." He boarded his Tamaraw FX and as he drove, he noticed a vehicle tailing him; it was a gray Isuzu Crosswind with no headlights and plate number.[10]

Rizaldo decided to head to the nearest police precinct on Evangelista Street. Upon alighting from his vehicle, he heard someone call his name. A man, whom he later identified as Avancena, alighted from the gray Isuzu Crosswind across the street. Rizaldo recognized him because they lived in the same barangay. Avancena told Rizaldo that one (1) of his companions in the Isuzu Crosswind noticed that Rizaldo received illegal drugs. Rizaldo denied Avancena's accusations. Avancena instructed Rizaldo that they should board Rizaldo's vehicle because Avancena was going to introduce him to the group's team leader, Tony Abalo (Abalo).[11]

While they were boarding Rizaldo's vehicle, he noticed Avancena calling over his companions in the Isuzu Crosswind. Avancena's companions alighted from their vehicle and approached them. One (1) of them, who introduced himself as Abalo, boarded the backseat of Rizaldo's vehicle. Upon Avancena's request, they distanced themselves about 50 meters

---

[8] *Id*. at 17.

[9] *Id*. at 41, RTC Joint Decision.

[10] *Id*. at 42, RTC Joint Decision.

[11] *Id*.

away from the police precinct and went to the corner of Kaiga Street where Avancena asked him again about a certain person that Rizaldo did not know. Avancena suggested again that "they should talk five [5] blocks away from the precinct."[12]

At the corner of Lacuna Street and Evangelista Street, Avancena alighted from Rizaldo's Tamaraw FX and talked to his companions in the Isuzu Crosswind. Avancena returned to Rizaldo's vehicle, opened the driver's side door, and told Rizaldo to move over to the passenger's side. Rizaldo could not complain because Avancena had a gun. He moved to the passenger's side but was surprised when another person, later identified as Taytay, opened the passenger's side door, boarded the vehicle, and handcuffed him. He demanded Avancena to explain what was happening but Avancena did not respond.[13]

Avancena drove to the Philippine Drug Enforcement Agency parking lot on Adriatico Street, Malate, Manila. Upon arriving, Rizaldo's handcuffs were removed and he was boarded on the Isuzu Crosswind. He was handcuffed again by Taytay whom he asked for an explanation but the latter did not answer.[14]

Avancena, Taytay, and Abalo, together with the rest of their group, boarded the Isuzu Crosswind and drove through Taft, Libertad and went around going to Makati. Abalo alighted when they reached Roxas Boulevard and Tambo Road. Then, they drove through Epifanio Delos Santos Avenue on the way to Makati. Once parked along Makati Avenue in front of Landmark Department Store, "Avancena and one [1] of his companions alighted from the vehicle." After 30 minutes, they came back to the vehicle and the group drove through Pasay Road again to return to the Philippine Drug Enforcement Agency parking lot. While onboard, Rizaldo was asked again about other people he might knew. The group started hurting him; Taytay was strangling him on his left side, Nazareno was holding

---

[12] *Id.*

[13] *Id.*

[14] *Id.* at 42-43, RTC Joint Decision.

him on his right side, and Popioco was punching him. Rizaldo pleaded with them to no avail.[15]

Upon arriving at the Philippine Drug Enforcement Agency parking lot, Avancena told Rizaldo that they would release him if his father would pay them ₱150,000.00. Rizaldo replied that his father did not have that amount of money and asked what it was for, since "he did not do anything illegal." Avancena removed his handcuffs and they alighted from the vehicle to have coffee on the sidewalk. After having coffee, Avancena commanded Rizaldo to call his father through a mobile phone. Rizaldo spoke to his father and told him to come over to the Philippine Drug Enforcement Agency since there were people demanding ₱150,000.00 for his release even though "he did not do anything wrong." Avancena grabbed the phone to talk to Rizaldo's father. Rizaldo, however, did not hear their conversation. They boarded the Isuzu Crosswind again and waited for an hour and a half for Rizaldo's father to arrive.[16]

At around 5:00 a.m. to 5:30 a.m., Rizaldo's father, Alfonso Policarpio (Alfonso), arrived. Alfonso alighted from his vehicle and boarded the Isuzu Crosswind on the passenger's side. Rizaldo recalled that his father was angry and told Avancena that he did not have the money requested. Alfonso invited Avancena for breakfast at Jollibee at the corner of Vito Cruz and Taft Avenue so they could talk. At Jollibee, everyone except Rizaldo alighted. The group invited Rizaldo for breakfast but he begged off since his body was aching. "[Rizaldo] waited for them for about 30 [to] 45 minutes."[17]

After breakfast, the group came back and one (1) of them took off Rizaldo's handcuffs. Alfonso followed the group and approached Avancena to hand him money, saying, "*Pare*, this is the only money I have, just call me by cellphone and I will give the remaining balance later." They returned to the Philippine

---

[15] *Id*. at 43.

[16] *Id*.

[17] *Id*.

Drug Enforcement Agency parking lot to get Rizaldo's vehicle. Then, Rizaldo drove home with his father following him.[18]

At around 1:00 p.m., Avancena called Rizaldo on his mobile phone to ask for the balance but Rizaldo told him to just ask his father. He then turned off his phone. "He claimed that he was traumatized by the incident."[19]

Alfonso, on the other hand, testified that on August 1, 2004, at around 4:00 a.m. to 5:00 a.m., his son Rizaldo called him on his mobile phone. He could not understand what Rizaldo was saying at first but noticed that his son was afraid and seemed to be already crying. Rizaldo informed him that he was abducted (*dinukot*) by Philippine Drug Enforcement Agency, through Avancena's group. Alfonso wondered why the Philippine Drug Enforcement Agency would arrest his son when its Task Force Hunter under Director Reynaldo Jaylo (Director Jaylo) had already been dissolved since July 2004. Their conversation was disrupted but his mobile phone rang again showing his son's number. The man on the other line introduced himself as Avancena who told him to proceed to the Philippine Drug Enforcement Agency parking lot to talk about his son and to bring him any amount of money.[20]

Alfonso brought a borrowed amount of ₱5,000.00 to the Philippine Drug Enforcement Agency. At the parking lot, he saw Avancena in the driver's seat waving to him. Avancena instructed him to sit at the passenger's side and to talk to Rizaldo first. His group then alighted from the vehicle.[21]

Rizaldo informed him that "[Avancena's group] was linking him to drug-related cases." Alfonso told his son that "[Avancena's group] was no longer connected with [the Philippine Drug Enforcement Agency]" and that they were asking for ₱150,000.00 for his release.[22]

---

[18] *Id*.

[19] *Id*. at 43-44, RTC Joint Decision.

[20] *Id*. at 44.

[21] *Id*.

[22] *Id*.

After talking, Alfonso alighted from the vehicle and invited Avancena to breakfast at Jollibee. When they entered Jollibee, Avancena asked him, "*Pare*, did you bring with you the ₱150,000.00?" Alfonso answered, "*Pare*, I did not bring with me that amount, it is too big." Avancena inquired how much money he was able to bring. He replied that he only brought ₱4,000.00 as he was paying for breakfast. Avancena said, "Okay *pare*, you could bring your son home but don't forget that you still have a balance." He was also told that if he did not pay, his son would be abducted again.[23]

After breakfast, Avancena told Alfonso to follow him outside. Avancena's group boarded the Isuzu Crosswind. Alfonso went to Avancena's window and handed him ₱4,000.00. They then drove back to the Philippine Drug Enforcement Agency with Alfonso following in his car. At the Philippine Drug Enforcement Agency, Avancena gave Alfonso his son's car keys. He also noticed that Avancena gave one (1) of his companions a small key to unlock his son's handcuffs. When they went home to rest, Rizaldo told him that during this time, "Avancena called him twice."[24]

On August 2, 2004, at around 10:00 a.m., Rizaldo and Alfonso went to the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) at Camp Crame to report the incident. While Alfonso was talking to a certain Colonel Aguilar, Avancena called on his cellphone. He answered and pointed to it to inform Colonel Aguilar that Avancena was on the other line. Avancena asked him for the balance of ₱150,000.00. Alfonso told him that he could not afford that amount and asked if he could just pay ₱40,000.00. Avancena countered with ₱50,000.00 but eventually agreed to ₱40,000.00.[25]

Colonel Aguilar went with them to the National Anti-Kidnapping Task Force (NAKTAF) where investigations were

---

[23] *Id*.

[24] *Id*. at 44-45, RTC Joint Decision.

[25] *Id*. at 45.

conducted. Colonel Aguilar instructed Alfonso to produce the money but Alfonso told him he did not have that amount. Colonel Aguilar told him to just bring any amount of money he could so the money could be brought to the laboratory to be marked. Alfonso was able to give ₱6,000.00 in 20.00 bills.[26]

The pay-off was scheduled on August 6, 2004, but it did not push through. On August 7, 2004, Alfonso received a call from Abalo who claimed to be Avancena's team leader. They decided that Alfonso would deliver the money on August 9, 2004 in the afternoon. After the phone call, Alfonso called NAKTAF to disclose his agreement with Abalo.[27]

At around 11:00 a.m. on August 9, 2004, NAKTAF deployed 20 operatives to Alfonso's place on Evangelista Street, Barangay Bangkal. A briefing was conducted and Alfonso was given a plastic bag containing the marked money and was instructed to hand it to Avancena's group.[28]

At around 12:00 noon, NAKTAF directed Alfonso to go to Evangelista Street and advised him of the operatives present in the vicinity. He went in front of the Iglesia ni Cristo Church, the pre-arranged pay-off place. At around past noon, Avancena's group, along with two (2) other companions, arrived in a white Revo. Avancena approached him and retrieved the plastic bag with the marked money. The group boarded their vehicle and entered Gen. Mojica Street. Suddenly, Alfonso heard a gunshot and sirens and a commotion followed.[29]

After the commotion, Alfonso entered Gen. Mojica Street and asked around what happened. He was told that people were injured during the commotion. A NAKTAF operative approached and asked him to fetch his son and to follow them to the NAKTAF office where they were asked who was

---

[26] *Id*.

[27] *Id.*

[28] *Id.*

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

responsible for the abduction. Alfonso executed a sworn statement to detail his account of events.[30]

Several police officers from the NAKTAF and AIDSOTF were also called to testify on the circumstances surrounding the planning and coordination for the entrapment operation.[31] Captain Jeffrey Villarosa, commander of the Anti-Kidnapping Special Operations Group, testified that he personally witnessed Alfonso give the marked money to Avancena.[32] Police Senior Inspector Juanita Darlucio Sioson, a forensic officer, testified that Avancena's group tested positive for the presence of yellow ultraviolet powder on their faces.[33] Police Inspector Zosima Nabor (Police Inspector Nabor) of the Human Resource Service of Philippine Drug Enforcement Agency likewise attested that members of Avancena's group were not employees of Philippine Drug Enforcement Agency. She further affirmed that Task Force Hunter led by Director Jaylo was deactivated on July 30, 2004 and that she was unaware of the documentation of any of its volunteer agents.[34]

In the defense's version of the facts, Nazareno testified that he was with Avancena's group on the night of August 1, 2004 conducting surveillance operations on Rizaldo as volunteer agents for the Philippine Drug Enforcement Agency. He alleged that they followed Rizaldo's vehicle along Evangelista Street and that when Rizaldo noticed he was being tailed, he parked in front of the police precinct, alighted from his vehicle, and approached them to ask why he was being followed. Avancena told him that he noticed Rizaldo hand something to someone on Villaruel Street. Rizaldo volunteered to return to Villaruel Street so Avancena boarded Rizaldo's vehicle.[35]

---

[30] *Id*. at 46.

[31] *Id*. at 90-94.

[32] *Id*. at 91.

[33] *Id*. at 93.

[34] *Id*. at 92-93.

[35] *Id*. at 94.

Nazareno claimed that the group followed Rizaldo's vehicle supposedly to Villaruel Street but the vehicle proceeded to the Philippine Drug Enforcement Agency Office in Vito Cruz, Manila. Rizaldo allegedly offered them "work regarding drugs" but that he had to ask his father's permission first. Alfonso, Rizaldo's father, arrived and talked to Avancena. He then invited them to eat at Jollibee. After eating, Alfonso gave them ₱4,000.00 which they refused to accept. Alfonso insisted and even "threw it on top of the taxi."[36] Alfonso asked for the number of Avancena who had no mobile phone, so he was given Popioco's number instead. They parted ways and the group headed to the office.[37]

Nazareno recalled that on August 9, 2004, Alfonso invited them to eat at his house on Evangelista Street and to tell them that the information Rizaldo gave them was already available. The group only stayed in the garage. Alfonso insisted on giving the ₱20.00 bills to Avancena but the latter refused to accept so Alfonso threw the money at them and said, "*mga walanghiya kayo nadali ko rin kayo.*" Alfonso fired his gun upwards then shot Popioco on his left arm. AIDSOTF and NAKTAF operatives then entered the premises, pointed their guns at them, and brought them to Camp Crame.[38] Taytay and Popioco gave substantially the same account as Nazareno.[39]

Avancena corroborated Nazareno's testimony and added that at midnight on August 1, 2004, they were conducting surveillance on a certain Rene Belmonte, a drug pusher, upon instructions of Director Jaylo. He saw a Tamaraw FX approach and told the group that he recognized the driver as Rizaldo. He noticed a man give something to Rizaldo so they alighted from the vehicle to approach the man but he had gone to an alley. He told the group that they should follow the Tamaraw FX because he knew it was involved in drugs. When confronted, Rizaldo

---

[36] It was not mentioned where the taxi came from.

[37] CA *rollo,* p. 94.

[38] *Id*. at 95.

[39] *Id*. at 95-97.

said that it was nothing and challenged Avancena to talk to the person who allegedly handed him something. Avancena boarded Rizaldo's vehicle for them to go back and look for the person but Rizaldo changed his mind and offered to give him information on persons selling drugs instead.[40]

Avancena likewise denied that there was kidnapping since "Rizaldo knew him and voluntarily went with them in their [Philippine Drug Enforcement Agency] office." He insisted that his group was directed to go to the Policarpio residence on August 9, 2004 to get information about selling of drugs.[41]

On December 22, 2008, Branch 62, Regional Trial Court of Makati City rendered a Joint Decision[42] finding Avancena, Popioco, and Taytay (accused-appellants)[43] guilty beyond reasonable doubt of kidnapping with serious illegal detention and robbery.

The dispositive portion of the Joint Decision read:

> WHEREFORE, in light of the foregoing facts established, finding the accused, ELMER AVANCENA y CABANELA, JAIME POPIOCO y CAMBAYA, and NOLASCO TAYTAY y CRUZ GUILTY beyond reasonable doubt of the felony of kidnapping with serious illegal detention defined and penalized under Article 267 of the Revised Penal Code, this Court hereby sentences the foregoing individual to suffer the penalty of RECLUSION PERPETUA without eligibility for parole under the Indeterminate Sentence Law pursuant to Section 3 of Republic Act No. 9346.
>
> On charge of robbery defined and penalized under Article 294 (5) of the Revised Penal Code, finding the accused ELMER AVANCENA y CABANELA, JAIME POPIOCO y CAMBAYA, and NOLASCO TAYTAY y CRUZ GUILTY beyond reasonable doubt of the offense charged, they are all required to suffer the indeterminate

---

[40] *Id*. at 97.

[41] *Id*. at 98.

[42] *Id*. at 84-103.

[43] Accused Eric Nazareno *y* Bonita died on July 28, 2007 during the pendency of the case in the trial court. (CA *rollo,* p. 84)

penalty of four (4) years of prision correccional medium as minimum to six (6) years and one (1) day of prision mayor minimum, as maximum.

The Jail Warden of the Makati City Jail is hereby ordered to commit the persons of the foregoing accused to the National Bilibid Prisons immediately and to submit his Report of the actions he has taken within ten (10) days from notice hereof.

The firearms seized in connection with this case, to wit: one (1) cal. 9 mm Llama Parabellum with serial number 10763-95, one (1) cal. .45 ACP Norinco with serial number 600187 and one (1) 9 mm Pietro Beretta with serial number M03095Z are hereby confiscated in favor of the government and if still in Court's custody, be immediately turned-over to the Firearms and Explosives Division, PNP.

SO ORDERED.[44]

Accused-appellants filed a Motion for Reconsideration of this Joint Decision but it was denied in an Order[45] dated March 5, 2009. Thus, they appealed to the Court of Appeals.[46]

On September 17, 2010, the Court of Appeals affirmed the Regional Trial Court's Joint Decision.[47] The Court of Appeals found that the evidence established the accused-appellants' "concerted and collective efforts" in handcuffing and detaining Rizaldo inside their vehicle and that his father had to negotiate his release.[48] The Court of Appeals likewise affirmed the finding that they were also guilty of robbery since "they were caught *in flagrante delicto* in a planned, coordinated and legitimate entrapment operation."[49]

---

[44] *Id*. at 102-103.

[45] *Id*. at 104-105.

[46] *Id*. at 38.

[47] *Rollo,* pp. 2-30.

[48] *Id*. at. 27–28.

[49] *Id*. at 29.

Accused-appellants filed a Notice of Appeal[50] manifesting their intention to appeal to this Court, which was given due course by the Court of Appeals.[51] The Office of the Solicitor General manifested to this Court that it was no longer filing a supplemental brief and would be adopting the brief it filed before the Court of Appeals.[52] Accused-appellants, on the other hand, submitted a Memorandum,[53] which this Court considered as their Supplemental Brief.[54]

In their Memorandum, accused-appellants allege, among others, that the trial court chose to convict Nazareno despite his death. They claim that this case is the "revenge" of Alfonso, who sought the help of his friends in NAKTAF and AIDSOTF to fabricate the charges against them.[55] They argue that "Jabalo," Jaymalin, and Grefaldeo were initially charged with the offense but that Alfonso surprisingly withdrew the case against them.[56]

Accused-appellants maintain that Rizaldo could have sought help from the nearby police precinct if he was in danger and that the Policarpio family did not seek police assistance.[57] They likewise insist that Rizaldo admitted that he was caught (*hinuli*), not abducted (*dinukot)*, by legitimate Philippine Drug Enforcement Agency operatives.[58] They also point out that

---

[50] *Id*. at 31.

[51] *Id*. at 32.

[52] *Id*. at 47-49, Manifestation (In Lieu of Supplemental Brief).

[53] *Id*. at 52-61, Memorandum for Accused-Appellants.

[54] *Id*. at 63. On June 20, 2016, this Court issued a Resolution allowing accused-appellant Nolasco Taytay *y* Cruz to be referred to Ospital ng Muntinlupa to undergo a cholecystectomy. He was readmitted to the National Bilibid Prison Hospital Ward on August 18, 2016 for post-surgery care. (*Rollo*, pp. 107-121)

[55] *Id*. at 52.

[56] *Id*. at 56-57.

[57] *Id*. at 57.

[58] *Id*. at 58.

forensic examination found ultra-violet powder on their faces, not their hands, which proves their testimony that Alfonso threw the marked money at them.[59]

The sole issue to be resolved is whether accused-appellants are guilty beyond reasonable doubt of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code and robbery under Article 294(5) of the Revised Penal Code.

I

Article 267[60] of the Revised Penal Code states:

> Article 267. *Kidnapping and serious illegal detention*. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
>
> 2. If it shall have been committed simulating public authority.
>
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
>
> 4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.
>
> The penalty shall be death penalty where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.
>
> When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

In kidnapping for ransom, the prosecution must be able to establish the following elements: "[*first*,] the accused was a private person; [*second*,] he [or she] kidnapped or detained or

[59] *Id*. at 59.

[60] As amended by Rep. Act No. 7659 (1993).

in any manner deprived another of his or her liberty; [*third*,] the kidnapping or detention was illegal; and [*fourth*,] the victim was kidnapped or detained for ransom."[61]

Accused-appellants claim that they were agents of the Philippine Drug Enforcement Agency's Task Force Hunter but were unable to present any evidence to substantiate their claim. The prosecution, however, was able to present Police Inspector Nabor of the Human Resource Service of Philippine Drug Enforcement Agency, who testified that accused-appellants "[were] not in any manner connected with [Philippine Drug Enforcement Agency]."[62] It also submitted to the trial court a letter sent by P/Supt. Edwin Nemenzo of the Philippine Drug Enforcement Agency to Philippine National Police P/Sr. Supt. Allan Purisima stating that the accused-appellants were not agents of the Philippine Drug Enforcement Agency.[63]

Nonetheless, even if they were employed by the Philippine Drug Enforcement Agency, detaining any private person for the purpose of extorting any amount of money could not, in any way, be construed as within their official functions. If proven, they can be guilty of serious illegal detention.[64] Their badges or shields do not give them immunity for any criminal act.

---

[61] *People v. Gregorio*, G.R. No. 194235, June 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/194235.pdf> 12 [Per *J*. Leonardo-De Castro, First Division] citing *People v. Lugnasin*, G.R. No. 208404, February 24, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/208404.pdf> 6 [Per *J*. Leonardo-De Castro, First Division].

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

[63] *Id*. at 99.

[64] Revised Penal Code, Art. 267 provides:

Article 267. Serious Illegal Detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusión temporal*:

1. If the locking up or detention shall have lasted more than twenty days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person locked up or detained, or if threats to kill him shall have been made.

The prosecution was likewise able to prove that Rizaldo was illegally deprived of his liberty. The undisputed facts establish that on August 1, 2004, around midnight, Rizaldo was in his vehicle being followed by accused-appellants along Evangelista Street. When he alighted from his vehicle near the police station, accused-appellant Avancena approached him and implied that he was involved in the sale of illegal drugs. Accused-appellant boarded his vehicle and told Rizaldo to drive, with the rest of the accused-appellants following in their vehicle. Upon reaching the corner of Lacuna and Evangelista Streets, accused-appellant Avancena took over the steering wheel. Accused-appellant Taytay boarded the vehicle and handcuffed Rizaldo and they drove to the Philippine Drug Enforcement Agency parking lot in Malate. Accused-appellant Popioco and Nazareno also boarded the vehicle. They drove around for a while in the Manila and Makati areas but eventually returned to the Philippine Drug Enforcement Agency parking lot. While on board, accused-appellant Taytay tried to strangle Rizaldo while accused-appellant Popioco punched him.[65]

In order to prove kidnapping, the prosecution must establish that the victim was "forcefully transported, locked up or restrained."[66] It must be proven that the accused intended "to deprive the victim of his liberty."[67] The act of handcuffing Rizaldo and physically harming him to prevent escape falls under this definition. Accused-appellants, however, claim that Rizaldo was not kidnapped because he voluntarily went with the accused-appellants.

"[T]he fact that the victim voluntarily went with the accused [does] not remove the element of deprivation of liberty [if] the victim went with the accused on a false inducement without

---

[65] CA *rollo*, p. 99.

[66] *People v. Cruz*, 616 Phil. 424, 445 (2009) [Per *J*. Peralta, *En Banc*] citing *People v. Ubongen*, 409 Phil. 140, 149-150 (2001) [Per *J*. Quisumbing, Second Division].

[67] *Id.* citing *People v. De la Cruz*, 342 Phil. 854 (1997) [Per *J*. Melo, Third Division] and *People v. Sinoc*, 341 Phil. 355 (1997) [Per *C.J.* Narvasa, Third Division].

which the victim would not have done so."[68] Rizaldo would not have gone with the accused-appellants had they not misrepresented themselves as Philippine Drug Enforcement Agency agents who allegedly caught him selling illegal drugs.

Accused-appellants also told Rizaldo that he would only be released if Alfonso paid them ₱150,000.00. "The act of holding a person for a proscribed purpose necessarily implies an unlawful physical or mental restraint against the person's will, and with a willful intent to so confine the victim."[69] If Rizaldo was indeed free to leave, there would have been no reason for Alfonso to come rushing to his son's aid. Rizaldo was also able to come home only after Alfonso negotiated his release.

Taken together, the prosecution was able to establish the elements of kidnapping for ransom, which is punishable under the Revised Penal Code with death. Considering the suspension of the death penalty,[70] the proper penalty is *reclusion perpetua* without eligibility for parole.[71]

II

Accused-appellants, however, were also charged with robbery under Article 294(5) of the Revised Penal Code,[72] which states:

> 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:
>
> . . . .
>
> 5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

---

[68] *Id*. at 446, citing *People v. Santos*, 347 Phil. 723 (1997) [Per *J*. Panganiban, Third Division].

[69] *People v. Soberano*, 346 Phil. 449, 461 (1997) [Per *J*. Regalado, Second Division] citing 24 Am Jur 2d, Abduction and Kidnapping, Secs. 21, 191.

[70] Rep. Act No. 9346 (2006).

[71] *See* A.M. No. 15-08-02-SC (2015).

[72] As amended by Rep. Act No. 7659 (1993).

The elements of simple robbery are "a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things."[73]

Rizaldo's ordeal did not end with his release from captivity. While reporting the crime to AIDSOTF in Camp Crame, Alfonso received a call from accused-appellant Avancena demanding the payment of ₱150,000.00. Because of the continued demands for payment, NAKTAF had the opportunity to set up an entrapment operation.[74] Alfonso gave AIDSOTF ₱6,000.00, which NAKTAF prepared as marked money and placed in a plastic bag.[75]

During the entrapment operation, accused-appellants arrived in the designated place in a white Toyota Revo. Accused-appellant Avancena approached Alfonso and received the marked money from him. When they drove away, NAKTAF agents followed them and were able to apprehend them. NAKTAF was able to recover the marked money from them.[76]

In this instance, there was a taking of personal property belonging to Alfonso by means of intimidation. "Taking is considered complete from the moment the offender gains possession of the thing, even if [the offender] has no opportunity to dispose of the [thing]."[77] The marked money was recovered from the accused-appellants when they were arrested, which proves that they were able to gain possession of Alfonso's money.

---

[73] *Sazon v. Sandiganbayan*, 598 Phil. 35, 45 (2009) [Per *J.* Nachura, Third Division] citing *People v. Pat*, 324 Phil. 723, 741–742 (1996) [Per *J*. Romero, Second Division].

[74] CA *rollo*, pp. 101-102.

[75] *Id*. at 89.

[76] *Id.* at 102.

[77] See *Sazon v. Sandiganbayan*, 598 Phil. 35, 45-46 (2009) [Per *J.* Nachura, Third Division].

Accused-appellants, however, counter that the ultraviolet powder dusted on the marked money was found on their faces, not their hands. This detail is irrelevant. A number of events could have transpired from the time NAKTAF agents apprehended the Toyota Revo up to the time the accused-appellants were handcuffed and brought to Camp Crame,[78] including the possibility that the accused-appellants simply wiped their hands clean. What is essential is that the prosecution was able to establish that at the time of their arrest, the marked money was recovered from the accused-appellants.

Accused-appellants likewise allege that this case was Alfonso's "revenge" against them. They, however, failed to substantiate any of these allegations. This Court does not find any merit to accused-appellants' other allegations, such as Nazareno's conviction even after his death and that Alfonso requested the dropping of charges against "Jabalo," Jaymalin, and Grefaldeo. A reading of the first page of the trial court's Joint Decision shows that Nazareno's criminal liability was extinguished by his death.[79] There was also no "Jabalo" charged and the dropping of charges against the other accused was the result of a reinvestigation by the Department of Justice.[80]

Considering the weight of evidence presented by the prosecution, accused-appellants are found guilty beyond reasonable doubt of robbery under Article 294(5) of the Revised Penal Code. The proper penalty is *prision correccional* maximum to *prision mayor* medium.

Applying the Indeterminate Sentence Law, the minimum penalty shall be within the range of the penalty next lower in degree, *arresto mayor* maximum to *prision correccional* medium or four (4) months and one (1) day to four (4) years and two

---

[78] CA *rollo*, p. 92.

[79] *See* footnote 1 of RTC Decision, CA *rollo*, p. 84.

[80] *See* footnote 8 of RTC Decision, CA *rollo*, p. 84.

(2) months. There being no aggravating or mitigating circumstances, the maximum of the penalty shall be within the range of the penalty in its medium period, *prision mayor* minimum, or from six (6) years and one (1) day to eight (8) years.[81] Thus, the trial court did not err in imposing the indeterminate penalty of four (4) years of *prision correccional* medium, as minimum to six (6) years and one (1) day of *prision mayor* minimum, as maximum.[82]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated September 17, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 03928 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

FIRST DIVISION

[G.R. No. 202091. June 7, 2017]

SUMIFRU (PHILIPPINES) CORP. (surviving entity of a merger with Fresh Banana Agricultural Corporation and other corporations), *petitioner, vs.* **NAGKAHIUSANG MAMUMUO SA SUYAPA FARM**[1] **(NAMASUFA-NAFLU-KMU)**, *respondent.*

---

[81] See *also Eduarte v. People*, 603 Phil. 504, 520 (2009) [Per *J.* Chico-Nazario, Third Division].

[82] CA *rollo*, p. 103.

[1] Also referrred to as Nagkakahiusang Namumuo sa Suyapa farm in some parts of the records.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW.—** Sumifru's arguments raise questions of facts. Indeed, it even submitted to this Court, as annexes to its Petition, the very same evidence it had presented before the Med-Arbiter, the DOLE Secretary, and the CA in its attempt to try to convince the Court that the members of NAMASUFA are not its employees. It is fundamental that in a petition for review on certiorari, the Court is limited to only questions of law. As specifically applied in a labor case, the Court is limited to reviewing only whether the CA was correct in determining the presence or absence of grave abuse of discretion on the part of the DOLE Secretary.

2. **ID.; ID.; ID.; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES ARE ENTITLED TO GREAT RESPECT WHEN THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, AND ARE BINDING UPON THE SUPREME COURT IN THE ABSENCE OF ANY SHOWING OF A WHIMSICAL OR CAPRICIOUS EXERCISE OF JUDGMENT.—** [A]s held in *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, findings of fact of quasi-judicial agencies are entitled to great respect when they are supported by substantial evidence and, in the absence of any showing of a whimsical or capricious exercise of judgment, the factual findings bind the Court x x x. Here, the CA was correct in finding that the DOLE Secretary did not commit any whimsical or capricious exercise of judgment when it found substantial evidence to support the DOLE Secretary's ruling that Sumifru was the employer of the members of NAMASUFA. As defined, substantial evidence is "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."

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
Lilibeth Ladaga for respondent.

DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court filed by petitioner Sumifru (Philippines) Corp. (Sumifru), assailing the Decision[3] dated February 8, 2012 and Resolution[4] dated May 18, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 03574. The CA affirmed the Resolution dated February 8, 2010[5] of the Secretary of the Department of Labor and Employment (DOLE) which, in turn, affirmed the Order dated July 28, 2008[6] of DOLE Regional Office No. XI Circuit Mediator-Arbiter (Med-Arbiter), which ordered the conduct of certification election of the rank-and-file employees of Sumifru in P-1 Upper Siocon, Compostela, Comval Province.

Facts

Sumifru is a domestic corporation and is the surviving corporation after its merger with Fresh Banana Agricultural Corporation (FBAC) in 2008.[7] FBAC was engaged in the buying, marketing, and exportation of Cavendish bananas.[8]

Respondent Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA-NAFLU-KMU) (NAMASUFA) is a labor organization affiliated with the National Federation of Labor Unions and Kilusang Mayo Uno.[9]

---

[2] *Rollo,* pp. 9-35.

[3] *Id.* at 41-50. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Melchor Q. C. Sadang and Pedro B. Corales concurring.

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

[5] *Id*. at 124-129.

[6] *Id*. at 99-104. Penned by Circuit Med-Arbiter Gerardine A. Jamora.

[7] *Id*. at 11.

[8] *Id*. at 12.

[9] *Id*. at 11.

The CA summarized the start of the proceedings with the Med-Arbiter as follows:

On March 14, 2008, the private respondent Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA-NAFLU-KMU), a legitimate labor organization, filed a Petition for Certification Election before the Department of Labor and Employment, Regional Office No. XI in Davao City. NAMASUFA sought to represent all rank-and-file employees, numbering around one hundred forty, of packing plant 90 (PP 90) of Fresh Banana Agricultural Corporation (FBAC). NAMASUFA claimed that there was no existing union in the aforementioned establishment.

On May 9, 2008 FBAC filed an Opposition to the Petition. It argued that there exists no employer-employee relationship between it and the workers involved. It alleged that members of NAMASUFA are actually employees of A2Y Contracting Services (A2Y), a duly licensed independent contractor, as evidenced by the payroll records of the latter.

NAMASUFA, in its Comment to Opposition countered, among others, that its members were former workers of Stanfilco before FBAC took over its operations sometime in 2002. The said former employees were then required to join the Compostela Banana Packing Plant Workers' Cooperative (CBPPWC) before they were hired and allowed to work at the Packing Plant of FBAC. It further alleged that the members of NAMASUFA were working at PP 90 long before A2Y came.

In June 20, 2008, pending resolution of the petition, FBAC was merged with SUMIFRU, the latter being the surviving corporation.[10]

On July 28, 2008, the DOLE Med-Arbiter issued an Order granting the Petition for Certification Election of NAMASUFA and declared that Sumifru was the employer of the workers concerned. The dispositive portion of the Order states:

WHEREFORE, premises considered, the petition for certification election filed by Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA) – NAFLU – KMU is hereby **GRANTED**. Let a certification election among the rank-and-file workers of Fresh Banana

---

[10] *Id*. at 42-43.

Agricultural Corporation be conducted at the company premises located at P-1 Upper Siocon, Compostela, Comval Province with the following as choices:

1. Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA) – NAFLU – KMU; and

2. No Union

Let the entire records of this case be forwarded to Comval Field Office, this Department, for the usual pre-election conference.

The employer Fresh Banana Agricultural Corporation is hereby **DIRECTED** to submit within five (5) days from receipt of this Order, a certified list of the rank-and-file employees in the establishment or the payrolls covering the members of the bargaining unit for the last three (3) months prior to the issuance of this Order.

SO ORDERED.[11]

In ruling that an employer-employee relationship existed, the Med-Arbiter stated:

The "four-fold test" will show that respondent FBAC is the employer of petitioner's members. The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.

On the first factor, (selection and engagement of the employer), it is apparent that the staff of respondent FBAC advised those who are interested to be hired in the Packing Plant to become members first of CBPPWC and get a recommendation from it.

On the second factor (payment of wages), while the respondent tried to impress upon us that workers are paid by A2Y Contracting Services, this at best is but an administrative arrangement. We agree with petitioner that the payroll summary submitted does not contain the relevant information such as the employee's rate of pay, deductions made and the amount actually paid to the employee.

---

[11] *Id*. at 103-104.

On the third factor, (the power of dismissal), it is very clear that respondent FBAC is the authority that imposes disciplinary measures against erring workers. This alone proves that it wields disciplinary authority over them.

Finally, on the fourth factor which is the control test, the fact that the respondent FBAC gives instructions to the workers on how to go about their work is sufficient indication that it exercises control over their movements. The workers are instructed as to what time they are supposed to report and what time they are supposed to return. They were required to fill up monitoring sheets as they go about their jobs and even the materials which they used in the packing plant were supplied by FBAC.

Viewed from the above circumstances, it is clear that respondent FBAC is the real employer of the workers of Packing Plant 90. They are in truth and in fact the employees of the respondent and its attempt to seek refuge on A2Y Contracting Services as the ostensible employer was nothing but an elaborate scheme to deprive them their right to self-organization.[12]

Sumifru appealed to the DOLE Secretary and in a Resolution dated February 8, 2010, the DOLE Secretary dismissed the appeal, the dispositive portion of which states:

WHEREFORE, considering the foregoing, the appeal is hereby **DISMISSED** for lack of merit and the assailed Order dated 28 July 2008 of DOLE Regional Office No. XI Circuit Mediator-Arbiter Gerardine A. Jamora is **AFFIRMED**.

Let the entire records of this case be remanded to the Regional Office of origin for the immediate conduct of a certification election subject to the usual pre-election conference.

SO RESOLVED.[13]

The DOLE Secretary ruled that Sumifru is the true employer of the workers, as follows:

In the present case, it is undisputed that CBPPWC is supplying workers to FBAC (now Sumifru). In fact, FBAC required its applicants

---

[12] *Id*. at 102-103.

[13] *Id*. at 129.

to become members of the cooperative first and seek recommendation from it before hiring them. Appellant Sumifru failed to proffer evidence to prove that CBPPWC is duly registered under Department Order No. 18-02. Also, it does not appear on record that CBPPWC possesses substantial capital or investment in relation with the work or services that are being performed by its members and that the employees placed by CBPPWC in Sumifru are performing activities distinct and independent from that of the main business of Sumifru. As such, this Office is inclined to believe that CBPPWC is engaged in labor-only contracting and the true employer of the subject workers is Sumifru.

The alleged partnership agreement between CBPPWC and A2Y is of no moment. It is well-settled that mere allegation without evidence to prove the same is self-serving that should not be given weight in any proceedings. Nonetheless, even if the alleged agreement indeed took place, the four-fold test in determining the existence of an employer-employee relationship still points to Sumifru as the employer.

x x x x x x x x x

In this case, Sumifru's control over the subject employees is evident. The fact that the subject workers are required by Sumifru to fill up monitoring sheets as they go about their jobs and the imposition of disciplinary actions for non-compliance with the "No Helmet – No Entry and No ID – No Entry" policies prove that it is indeed Sumifru, and not A2Y Contracting Services, that exercises control over the conduct of the subject workers.[14]

Sumifru then filed a Petition for *Certiorari* with the CA raising the issue of whether the DOLE Secretary committed grave abuse of discretion in declaring it as the employer of the workers at PP 90.[15] But the CA dismissed the petition. The dispositive portion of the CA Decision states:

WHEREFORE, finding no grave abuse of discretion on the part of the public respondent, the petition is DENIED. The Resolution dated February 8, 2010 issued by the public respondent Honorable Secretary of the Department of Labor and Employment is hereby AFFIRMED.

---

[14] *Id*. at 127-128.

[15] *Id.* at 46.

SO ORDERED.[16]

The CA ruled that the DOLE Secretary did not commit grave abuse of discretion because the latter's ruling that Sumifru was the employer of the workers was anchored on substantial evidence, thus:

SUMIFRU raises the same issue of non-existence of employer-employee relationship, which had been squarely resolved in the negative by the Med-Arbiter and the DOLE Secretary. We find no traces of abuse in discretion in the ruling of the DOLE Secretary anchored as it is on substantial evidence.

The Court has consistently applied the "four-fold test" to determine the existence of an employer-employee relationship: the employer (a) selects and engages the employee; (b) pays his wages; (c) has power to dismiss him; and (d) has control over his work. Of these, the most crucial is the element of control. Control refers to the right of the employer, whether actually exercised or reserved, to control the work of the employee as well as the means and methods by which he accomplishes the same.

In this case, the records are replete with evidence which would show that SUMIFRU has control over the concerned workers, to wit:

1. FBAC memorandum on "Standardized Packing Plant Breaktime";
2. Material Requisition for PP 90;
3. Memorandum dated February 9, 2008 on "no helmet, no entry" policy posted at the packing plant;
4. Memorandum dated October 15, 2007 on "no ID, no entry policy";
5. Attendance Sheet for General Assembly Meeting called by FBAC on February 18[,] 2004;
6. Attendance Sheet for Packers ISO awareness seminar on February 11, 2004 called by FBAC;

---

[16] *Id*. at 50.

7. FBAC Traypan Fruit Inspection Packer's Checklist issued by FBAC for the use of workers in the Packing Plant;

8. FBAC KD Gluing Pattern Survey.

The above orders issued by SUMIFRU/FBAC would show that not only does it have control over the results of the workers in PP 90 but also in the manners and methods of its accomplishment.[17]

The CA, after reviewing the records, accorded respect to the findings of facts of the DOLE Secretary, which affirmed the Med-Arbiter, as they have special knowledge and expertise over matters under their jurisdiction. The CA ruled:

As stated beforehand, there is no cogent reason to set aside the ruling of the DOLE Secretary which affirmed the findings of the Med-Arbiter. By reason of their special knowledge and expertise over matters falling under their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect and even finality by the courts when supported by substantial evidence, as in this case.[18]

Sumifru moved for reconsideration but the CA denied this in its Resolution dated May 18, 2012.

Hence, this Petition.

Issues

As stated in its Petition, Sumifru raised the following:

THE COURT OF APPEALS COMMITTED PALPABLE MISTAKE AND RULED CONTRARY TO LAW AND SETTLED JURISPRUDENCE WHEN IT AFFIRMED THE FINDINGS OF THE DOLE SECRETARY AND CONCLUDED THAT HEREIN PETITIONER, SUMIFRU, IS THE EMPLOYER OF THE WORKERS ENGAGED BY THE COOPERATIVE AND/OR A2Y FOR THE UPPER SIOCON GROWERS' PACKAGING OPERATIONS IN PACKING PLANT 90.

---

[17] *Id*. at 46-47.

[18] *Id*. at 49.

A. A2Y Contracting Services was engaged either by the Upper Siocon Growers or the Cooperative for the packing operations at PP 90.

B. Even assuming, for the sake of argument, that the Cooperative and/or A2Y are not legitimate labor contractors, only the Upper Siocon Growers, and not SUMIFRU, may be deemed the employer of the workers at PP 90.

C. The Department of Labor and Employment committed grave and palpable mistake when it grossly misapprehended the facts and evidence on record, that if properly appreciated will clearly establish that SUMIFRU is not the employer of the members of NAMASUFA working at PP 90.

D. The reliance on the alleged inconsistencies in the pleadings submitted by SUMIFRU is misplaced as there are no inconsistencies at all.[19] (Emphasis omitted)

The Court's Ruling

The Petition is denied.

Sumifru's arguments raise questions of facts. Indeed, it even submitted to this Court, as annexes to its Petition, the very same evidence it had presented before the Med-Arbiter, the DOLE Secretary, and the CA in its attempt to try to convince the Court that the members of NAMASUFA are not its employees.

It is fundamental that in a petition for review on *certiorari,* the Court is limited to only questions of law. As specifically applied in a labor case, the Court is limited to reviewing only whether the CA was correct in determining the presence or absence of grave abuse of discretion on the part of the DOLE Secretary. Thus, in *Holy Child Catholic School v. Sto. Tomas,*[20] the Court ruled:

Our review is, therefore, limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of

---

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

[20] 714 Phil. 427 (2013).

discretion in the decision of the [Secretary of Labor and Employment (SOLE)], not on the basis of whether the latter's decision on the merits of the case was strictly correct. Whether the CA committed grave abuse of discretion is not what is ruled upon but whether it correctly determined the existence or want of grave abuse of discretion on the part of the SOLE.[21]

In this regard, as held in *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals,*[22] findings of fact of quasi-judicial agencies are entitled to great respect when they are supported by substantial evidence and, in the absence of any showing of a whimsical or capricious exercise of judgment, the factual findings bind the Court:

> We take this occasion to emphasize that the office of a petition for review on *certiorari* under Rule 45 of the Rules of Court requires that it shall raise only questions of law. **The factual findings by quasi-judicial agencies, such as the Department of Labor and Employment, when supported by substantial evidence, are entitled to great respect in view of their expertise in their respective fields.** Judicial review of labor cases does not go so far as to evaluate the sufficiency of evidence on which the labor official's findings rest. It is not our function to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal, particularly where the findings of both the trial court (here, the DOLE Secretary) and the appellate court on the matter coincide, as in this case at bar. The Rule limits that function of the Court to the review or revision of errors of law and not to a second analysis of the evidence. Here, petitioners would have us re-calibrate all over again the factual basis and the probative value of the pieces of evidence submitted by the Company to the DOLE, contrary to the provisions of Rule 45. **Thus, absent any showing of whimsical or capricious exercise of judgment, and unless lack of any basis for the conclusions made by the appellate court be amply demonstrated, we may not disturb such factual findings.**[23] (Emphasis supplied.)

Here, the CA was correct in finding that the DOLE Secretary did not commit any whimsical or capricious exercise of judgment

---

[21] *Id*. at 456-457.

[22] 401 Phil. 776 (2000).

[23] *Id*. at 791-792.

when it found substantial evidence to support the DOLE Secretary's ruling that Sumifru was the employer of the members of NAMASUFA.

As defined, substantial evidence is "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."[24] Here, the Med-Arbiter found, based on documents submitted by the parties, that Sumifru gave instructions to the workers on how to go about their work, what time they were supposed to report for work, required monitoring sheets as they went about their jobs, and provided the materials used in the packing plant.[25]

In affirming the Med-Arbiter, the DOLE Secretary relied on the documents submitted by the parties and ascertained that Sumifru indeed exercised control over the workers in PP 90. The DOLE Secretary found that the element of control was present because Sumifru required monitoring sheets and imposed disciplinary actions for non-compliance with "No Helmet – No Entry" "No ID – No Entry" policies.[26]

In turn, the CA, even as it recognized that the findings of facts of the DOLE Secretary and the Med-Arbiter were binding on it because they were supported by substantial evidence, even went further and itself reviewed the records — to arrive, as it did arrive, at the same conclusion reached by the DOLE Secretary and Med-Arbiter: that is, that Sumifru exercised control over the workers in PP 90.[27]

In light of the foregoing, the Court cannot re-calibrate the factual bases of the Med-Arbiter, DOLE Secretary, and the CA, contrary to the provisions of Rule 45, especially where, as here,

---

[24] *T & H Shopfitters Corp./Gin Queen Corp. v. T & H Shopfitters Corp./ Gin Queen Workers Union,* 728 Phil. 168, 180-181 (2014).

[25] *Rollo*, pp. 102-103.

[26] *Id*. at 128.

[27] *Id*. at 47.

the Petition fails to show any whimsicality or capriciousness in the exercise of judgment of the Med-Arbiter or the DOLE Secretary in finding the existence of an employer-employee relationship.

WHEREFORE, premises considered, the petition for review is hereby **DENIED.** The Decision of the Court of Appeals dated February 8, 2012 and Resolution dated May 18, 2012 are hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 204262. June 7, 2017]

MARIO C. MADRIDEJOS, *petitioner, vs.* **NYK-FIL SHIP MANAGEMENT, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; LIMITED TO REVIEW OF QUESTIONS OF LAW.—** Since there are conflicting claims in this case, there is necessarily an attack on the factual findings of the labor tribunals and of the Court of Appeals. As a rule, we only examine questions of law in a Rule 45 petition. Thus, "we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the [National Labor Relations Commission], an administrative body that has expertise in its specialized field." Similarly, we do not replace our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The

factual findings of the National Labor Relations Commission, when confirmed by the Court of Appeals, are usually "conclusive on this Court." In this case, we do not see any reason to deviate from the general rule.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; SEAFARERS; THE EMPLOYMENT OF SEAFARERS AND ITS INCIDENTS ARE GOVERNED BY THE CONTRACTS THEY SIGN EVERY TIME THEY ARE HIRED OR RE-HIRED.—** Madridejos insists that he could not be on probationary status because he was merely "re-engaged" as evinced by his Overseas Filipino Worker Information. However, "[t]he employment of seafarers and its incidents are governed by the contracts they sign every time they are hired or re-hired. These contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy." Given that he submitted himself with the terms of his contract, NYK-FIL may validly terminate his services pursuant to their agreed terms. Moreover, Madridejos cannot feign ignorance about his termination letter, which shows his acquiescence through his signature. Also in his Reply to NYK-FIL's Position Paper before the National Labor Relations Commission, he explicitly recognized the termination of his contract x x x.

3. **ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; WORK-RELATED ILLNESS; DEFINED.—** The Philippine Overseas Employment [Administration] Standard Employment Contract, which is deemed integrated into Madridejos' employment contract with NYK-FIL, governs his claim for disability benefits. While these guidelines have been recently amended, Philippine Overseas Employment [Administration] Memorandum Circular No. 9 applies in this case since Madridejos signed his contract with NYK-FIL on March 25, 2010. The requisites for compensable illnesses are provided for under Section 20(B) of Philippine Overseas Employment [Administration] Memorandum Circular No. 9, Series of 2000 x x x. A work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under ***Section 32-A*** with the conditions set therein satisfied."

4. **ID.; ID.; ID.; ID.; ILLNESSES THAT ARE NOT INCLUDED IN THE LIST OF COMPENSABLE DISEASES ARE DISPUTABLY PRESUMED AS WORK-RELATED, SUCH THAT THERE IS STILL A NEED FOR THE CLAIMANT TO ESTABLISH, THROUGH SUBSTANTIAL EVIDENCE, THAT HIS ILLNESS IS WORK-RELATED.—** A sebaceous cyst is not included under Section 32 or 32-A of the 2000 Philippine Overseas Employment [Administration] Standard Employment Contract. However, the guidelines expressly provide that those illnesses not listed in Section 32 "are ***disputably presumed*** as work[-]related." Similarly, for an illness to be compensable, "it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer." It is enough that there is "a ***reasonable linkage*** between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had." The disputable presumption implies "that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits." Similarly, "the disputable presumption does not signify an automatic grant of compensation and/or benefits claim." There is still a need for the claimant to establish, through substantial evidence, that his illness is work-related. "Substantial evidence is more than a mere scintilla." It should attain "the level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion."

5. **ID.; LABOR CODE; SEAFARERS; PRE-EMPLOYMENT MEDICAL EXAMINATION; CANNOT BE RELIED UPON TO REFLECT A SEAFARER'S TRUE STATE OF HEALTH SINCE IT IS NOT EXPLORATORY AND MAY JUST DISCLOSE ENOUGH FOR EMPLOYERS TO DECIDE WHETHER A SEAFARER IS FIT FOR OVERSEAS EMPLOYMENT.—** "A seafarer only needs to pass the mandatory [Pre-Employment Medical Examination] in order to be deployed on duty at sea." A Pre-Employment Medical Examination cannot be relied upon to reflect a "seafarer's true state of health" since it is not exploratory and may just disclose enough for employers to decide whether a "seafarer is fit for overseas employment." Due to the nature of a Pre-Employment Medical Examination, it is possible that Madridejos' sebaceous cyst was not detected prior to his employment.

APPEARANCES OF COUNSEL

Dante L. Acorda for petitioner.
Retoriano & Olalia-Retoriano Law Offices for respondent.

D EC I S I O N

LEONEN, *J.*:

Illnesses not listed as an occupational disease under Section 32 of the 2000 Philippine Overseas Employment Administration Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels are disputably presumed to be work-related.[1] However, seafarers must prove through substantial evidence the correlation between their illness and the nature of their work for their claim for disability benefits to prosper.

This Petition for Review on Certiorari[2] assails the Resolutions dated September 26, 2012[3] and November 6, 2012[4] of the Court of Appeals in CA-G.R. SP No. 125529. The Court of Appeals ruled that the National Labor Relations Commission did not commit grave abuse of discretion in dismissing Mario Madridejos' (Madridejos) complaint for disability benefits.[5]

---

[1] POEA Memorandum Circular No. 009-00 (2000), Sec. 20(b).

[2] *Rollo*, pp. 12-53.

[3] *Rollo*, pp. 54-55. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Edwin D. Sorongon of the Sixteenth Division, Court of Appeals, Manila.

[4] *Id*. at 56. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Edwin D. Sorongon of the Former Sixteenth Division, Court of Appeals, Manila.

[5] *Id.* at 55.

Petitioner Madridejos was a Filipino seafarer[6] hired by respondent NYK-Fil Ship Management, Inc. (NYK-FIL),[7] a registered local manning agency operating by virtue of Philippine laws[8] for its foreign principal, International Cruise Services, Limited.[9]

On March 25, 2010, Madridejos signed an employment contract with NYK-FIL as a Demi Chef for the vessel "Crystal Symphony/Serenity."[10] The employment contract was effective for a period of 10 months with a basic monthly salary of US$1,055.00, an overtime rate of US$4.00 per hour beyond 70 hours, and vacation leave with pay amounting to 10% of his total income.[11]

On April 10, 2010, Madridejos commenced to work aboard the vessel.[12] Two (2) weeks after, or on April 28, 2010, he claimed that he suddenly slipped on a metal stairway and fell down, hitting his abdomen and chest on a metal pipe.[13] He was brought to the ship doctor and was diagnosed to have a "sebaceous cyst to the right of the umbilicus."[14]

The next day, Madridejos was treated at Spire Southampton Hospital in Hampshire, England.[15] Under a local anesthesia, his cyst was removed, and the lesion was closed with three (3) stitches.[16]

---

[6] *Id*. at 328, NYK-Fil Ship Management, Inc.'s Position Paper.

[7] *Id*. at 13. Also referred to as NFSMI which stands for NYK-Fil Ship Management, Inc.

[8] *Id*. at 328.

[9] *Id*. at 288 and 328.

[10] *Id*. at 288.

[11] *Id*. at 350, Contract of Employment.

[12] *Id*. at 164, NLRC Decision. The NLRC Decision has no page 3.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

After two (2) months, or on July 5, 2010, NYK-FIL terminated Madridejos' services through its foreign principal.[17] The notice of termination[18] read:

TO:	MR. MARIO MADRIDEJOS, #324 D/CHEF DE PARTIE MAIN GALLEY
FROM:	HERBERT DOPPLER, HOTEL DIRECTOR VICTOR CONCEIÇÃO, FOOD AND BEVERAGE MANAGER
CC:	CAPTAIN ICMA, OSLO VICE CAPTAIN EXECUTIVE CHEF/CREW ACCOUNTANT
DATE:	JULY 5, 2010
RE:	TERMINATION OF CONTRACT WITH INTERNATIONAL CRUISE SERVICES LIMITED

We regret to inform you that we have made the decision to discontinue your employment agreement. Hence, this letter serves as a formal, written termination of your contract with [International Cruise Services, Limited].

With reference to Item No. 7 in your "Employment Agreement", which states, "...First time EMPLOYEES shall be subject to a probationary period of three (3) months following commencement of service during which this AGREEMENT can be terminated by either party without cause at any time upon fourteen (14) days prior written notice", you are hereby given immediate notice effective today, Monday, July 5, 2010, which falls within the parameters outlined in your contract.

Your salary will be paid accordingly through and including July 18, 2010. Your sign off will take place in Istanbul, Turkey, on Monday, July 5, 2010. A flight ticket has been arranged to your home airport in Manila, Philippines, and the company will shoulder your repatriation expenses.[19]

---

[17] *Id.*

[18] *Id*. at 358, Notice of Termination.

[19] *Id*.

Madridejos was repatriated to the Philippines on July 6, 2010.[20]

Madridejos insisted that he did not finish his employment contract with NYK-FIL due to his unwanted health condition.[21] "Not being at fault . . . for the pre-termination of his employment contract, [he] made demands upon [NYK-FIL] . . . to pay his disability benefits."[22]

Madridejos also averred that after his medical procedure in Spire Southampton Hospital, he was advised to be sent back to the Philippines "for further evaluation and treatment."[23] In support, he attached the letter of Dr. James P. Byrne (Dr. Byrne), the doctor who excised his cyst in Spire Southampton Hospital. The letter read:

Dr. A. Fedorowiez
Ships Surgeon
M/S Crystal Serenity

Dear Dr. Fedorowiez,

Re: Mr. Mario MADRIDEJOS - d.o.b. 04/09/61
C/o Denholm Ship Agency Ltd Liner House, Test Road, Eastern Docks Southampton Hampshire SO4 3GE

Thank you very much for referring along this gentleman who works on your ship who has a sebaceous cyst to the right of the umbilicus. I explained the diagnosis to this gentleman in clinic today. He has had symptoms of aching and discomfort and we therefore proceeded to excise this lesion under local anaesthetic at the Spire Hospital Southampton today. The diagnosis of sebaceous cyst was confirmed and he has three interrupted nylon sutures to close the wound.

I would be very grateful if you could arrange for the sutures to be removed in approximately ten days' time and I have discharged him back to your care.

---

[20] *Id*. at 165.

[21] *Id.* at 295, Position Paper (for the Complainant).

[22] *Id*.

[23] *Id*. at 291.

Yours sincerely

(Dictated by Mr. Byrne but
sent unsigned to avoid delay)[24]

On July 6, 2010,[25] he arrived in Manila, Philippines. The following day, he allegedly reported to NYK-FIL "for a medical referral to the company doctor." However, he did not get any referral letter since he was told that his illness was not work-related.[26]

Due to persistent symptoms, he was purportedly constrained to undergo medical examinations by Physician-Surgeon Dr. Aylmer F. Españo (Dr. Españo) from Metropolitan Medical Center. He was also prescribed with medicines for his sebaceous cyst.[27] On August 26, 2010, Dr. Españo issued a medical certificate which stated:

> This is to certify that Mr. Mario Madridejos, male, married, a resident of Paete, Laguna, was seen and examined in this clinic from July 7, 2010 up to present, with the following findings and/or diagnosis:
>
> - Sebaceous Cyst (Right Umbilicus)
>
> Physical findings ha[ve] been noted with POEA Disability Grade 7- Moderate Residuals of Disorders of the Intra-abdominal organs, but due to the severity and deterioration of injury/illness[,] he is entitled under P.O.E.A. Disability Grade 1 for Severe Residuals of Impairment of intra-abdominal organs which requires aid and attendance that will unable [sic] worker to seek any gainful employment.
>
> Due to his medical condition[,] he is permanently unfit for further sea service in any capacity. Such injury/illnesses are work[-]related since exposed to toxic and hazardous material. Continuous medications and follow-up is advised . . . [28]

---

[24] *Id*. at 357.

[25] *Id.* at 319.

[26] *Id.* at 291.

[27] *Id*. at 291-292.

[28] *Id*. at 292, Position Paper (for the Complainant).

Due to his alleged "very slow healing process," the four (4) months of medical coverage included in his employment contract with NYK-FIL expired.[29] However, he still continued his medication as advised by Dr. Españo.[30]

Madridejos claimed that he also engaged the services of Dr. Eduardo Yu (Dr. Yu), an internist and specialist at Mary Chiles General Hospital.[31] Thus, another medical certificate was issued in his favor which provided:

> This is to certify that I have examined Mr. Mario Madridejos, male[,] married, in this clinic on September 16, 2010 and up to the present with following finding[s] and diagnosis of Sebaceous Cyst (Right Umbilicus)[.]
>
> Physical findings ha[ve] been noted with POEA Disability Grade 7-Moderate Residuals of Disorders of the Intra-abdominal Organ but due to the [s]everity and deterioration of injury/illness, he is entitled under P.O.E.A Disability Grade 1 for Severe Residuals of Impairment of Intra-Abdominal organ which requires aid and attendance that will unable [sic] worker to seek any gainful employment.
>
> Due to his medical condition[,] he is permanently unfit for further sea service in any capacity. Such injury/illness are work[-]related since exposed to toxic and hazardous materials. Advised continuous medications and follow-up check-up[.][32]

Madridejos argued that NYK-FIL ignored his repeated demands.[33] He was then prompted to file a complaint "for disability benefits, payment of medical expenses, damages, and attorney's fees"[34] against NYK-FIL before the labor arbiter.[35]

---

[29] *Id*. at 293, Position Paper (for the Complainant).

[30] *Id*.

[31] *Id*.

[32] *Id*. at 294, Position Paper (for the Complainant).

[33] *Id*. at 295.

[34] *Id*. at 282, Labor Arbiter's Decision.

[35] *Id*. at 295.

NYK-FIL denied that Madridejos was repatriated due to his sebaceous cyst. It asserted that this was not the reason since the cyst had been excised completely during his operation at Spire Southampton Hospital. Moreover, Madridejos even resumed his job "for the next two [2] months without any complaint or report of recurrence." [36]

NYK-FIL also insisted that Madridejos was not entitled to any disability claim since there was allegedly no disability to address. Madridejos only underwent an excision under a local anesthesia, which did not, in any way, "render him incapable to return to his previous work as a seafarer."[37]

NYK-FIL surmised that Madridejos merely filed a complaint as "an afterthought or an act of retribution . . . due to the early termination of his employment contract."[38] NYK-FIL purportedly terminated Madridejos' services properly pursuant to "Item 7"[39] of their employment agreement.[40]

---

[36] *Id*. at 333, NYK-FIL's Position Paper.

[37] *Id*. at 332.

[38] *Id*. at 333–334.

[39] *Id*. at 352–353. Item 7 of International Cruise Services, Ltd. Crystal Cruises Hotel Personnel Terms and Conditions provides:

. . . .

7. First-time EMPLOYEES shall be subject to a probationary period of three (3) months following commencement of service during which this AGREEMENT can be terminated by either party without cause at any time upon fourteen (14) days prior written notice. If the AGREEMENT is terminated in the probationary period by the EMPLOYER, the repatriation costs should be shouldered by the EMPLOYER. Thereafter either party may terminate this AGREEMENT without cause upon one (1) month written notice. An EMPLOYEE that terminates his contract before the expiry date, or demands to leave his employment without giving proper notice, will be responsible for his own repatriation costs. The probation period shall not apply to EMPLOYEES previously engaged by the EMPLOYER within a one (1) year period prior to the execution of this AGREEMENT. EMPLOYER may in lieu of providing the requisite notice, pay to the EMPLOYEE the Minimum Income to which the EMPLOYEE would be entitled during the notice period. If an EMPLOYEE

NYK-FIL concluded that Madridejos' illness was not work-related since there was no reasonable correlation between his cyst and his functions as a Demi Chef.[41] A cyst is merely caused by "blocked sebaceous glands, swollen hair follicles, and excessive testosterone production."[42]

In his August 11, 2011 Decision,[43] Labor Arbiter Gaudencio P. Demaisip, Jr. (Labor Arbiter Demaisip) found that Madridejos' illness "was incurred during the term of his employment contract," making it "compensable."[44] He affirmed and quoted Madridejos' explanation, which stated:

> As aptly pointed out by the Supreme Court explaining the doctrine of **"Welfare Legislation,"** thus:
>
> > Compensability of illness. Under the relevant contract: Compensability of the illness or death of [a] seaman need not depend on whether the illness was total or partial permanent disability. **It is sufficient that the illness occurred during the effectivity of the employment contract.**
> >
> > Even assuming that the ailment was contracted prior to employment, this would not deprive the seaman of compensation benefits. **For what matters is that his work had contribute[d], even in a small degree, to the development of the disease** and in bringing about his **Intra-abdominal organs** which requires aid and attendance that will unable [sic] workers to seek gainful employment.
>
> Due to his medical condition[,] he is permanently unfit for further sea service in any capacity. Such injury/illnesses are work[-]related since exposed to toxic and hazardous materials. Continuous medications and follow[-]up is advised.

---

in Group A1-B terminates this AGREEMENT during service on board and the EMPLOYEE signs off in accordance with the approved vacation plan, the term of notice shall apply from the date of signing off.

[40] *Id*. at 334.

[41] *Id*. at 336.

[42] *Id*.

[43] *Id*. at 282-285.

[44] *Id*. at 284.

This certification is being issued for whatever purpose it may serve him best.[45] (Emphasis in the original)

Labor Arbiter Demaisip emphasized, however, that since there was no evidence to prove the severity of Madridejos' illness, he should only be given a Disability Grade of 7.[46] The dispositive portion of the decision read:

IN VIEW OF THE FOREGOING, respondent Agency is directed to pay the complainant an amount equivalent to Grade 7 or US$ 20,900.

SO ORDERED.[47]

Both parties assailed the decision of Labor Arbiter Demaisip before the National Labor Relations Commission.[48] Madridejos asserted that Labor Arbiter Demaisip "erred in assessing him with only a Grade 7 disability" and claimed that "it should have been Grade 1 or permanent/total disability."[49] On the other hand, NYK-FIL averred that Labor Arbiter Demaisip failed to consider the termination of contract as the real cause behind Madridejos' repatriation.[50]

The National Labor Relations Commission, ruled in favor of NYK-FIL in its March 30, 2012 Decision.[51]

The National Labor Relations Commission found Madridejos' story as "unnatural."[52] His allegation that he was advised to

---

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

[46] *Id*. at 285.

[47] *Id.*

[48] *Id*. at 163-167, NLRC Decision. See also *rollo*, pp. 241-274, Petitioner's Memorandum on Appeal and *rollo*, pp. 198-240, Respondent's Notice of Appeal with Memorandum of Appeal.

[49] *Id.* at 163.

[50] *Id*. at 164.

[51] *Id*. at 163-167.

[52] *Id*. at 166.

be repatriated for further treatment in the Philippines was not sufficiently proven.[53] Based on Madridejos' discharge letter from Hampshire, England, his operation merely required three (3) stitches. Hence, he could not have been advised to pursue further treatment in the Philippines since his operation was only a minor one.[54]

Additionally, there was nothing in Madridejos' Position Paper[55] or Reply[56] that he complained of any pain, complication, or discomfort after his operation, indicating that "*everything went well.*"[57] Similarly, he never showed any ship record regarding his alleged accident.[58] Therefore, the National Labor Relations Commission concluded that Madridejos' claim was only an afterthought and reasoned that:

> Well then, knowing fully [sic] well that he was repatriated on July 6, 2010 because his service contract had already been terminated, why then as he alleged would he go to his local agency for a medical referral to their company doctor? He said that he was denied. But of course; in the first place **he was not their employee anymore, but more importantly he was not even sick as he had been working quite well the past several months. But now he is back, and sad part of it is that he was out of work. So he opted for the cyst story.** It is not really difficult to see, however that Madridejos' claim of being sick is an afterthought.[59] (Emphasis supplied)

The National Labor Relations Commission ruled further that Madridejos' cyst was not work-related since it was "simply a

---

[53] *Id*. at 165.

[54] *Id.*

[55] *Id*. at 286-326.

[56] *Id*. at 359-372.

[57] *Id*. at 165.

[58] *Id*.

[59] *Id.*

slow-growing pea-size[d] sac growth under the skin" that grew as a consequence of infection and caused "clogging of sebaceous glands."[60] "It can develop in any part of the body, and at times it just simply disappears."[61] The dispositive portion of the National Labor Relations Commission's decision provided:

> **WHEREFORE**, premises considered, complainant Madridejos' appeal is hereby DISMISSED for lack of merit, while that of respondents' is granted, the assailed decision is reversed and set aside, and the complaint herein for disability benefits is likewise DISMISSED for lack of merit.
>
> **SO ORDERED.**[62] (Emphasis in the original)

On April 30, 2012, the National Labor Relations Commission's Resolution[63] denied Madridejos' Motion for Reconsideration.[64]

On July 9, 2012, Madridejos filed a Petition for Certiorari[65] before the Court of Appeals claiming that the National Labor Relations Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction by disregarding the pertinent provisions of the Philippine Overseas Employment Agency Employment Contract.[66] Moreover, he argued that the National Labor Relations Commission gave more weight to NYK-FIL's "purely gratuitous and convoluted assertions" rather than the facts already proven.[67]

---

[60] *Id*. at 166.

[61] *Id*.

[62] *Id.*

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

[64] *Id*. at 170-195, Motion for Reconsideration (of the Decision dated 30 March 2012).

[65] *Id*. at 121-162.

[66] *Id*. at 123.

[67] *Id*. at 123.

The Court of Appeals dismissed[68] Madridejos' petition and ruled that the National Labor Relations Commission had judiciously denied Madridejos' claim for disability benefits.[69]

The Court of Appeals found that sometime in Madridejos' first or second month of employment, he suffered from a severe stomach ache while on board the vessel.[70] All the doctors involved agreed that his severe stomach ache was due to a "Sebaceous Cyst to the right Umbilicus," which was already removed on April 29, 2010.[71]

Hence, his repatriation in July 2010 was not due to his medical condition but due to the expiration of his contract as a probationary employee.[72] Similarly, the Court of Appeals also confirmed National Labor Relations Commission's finding that Madridejos' cyst was not work-related.[73]

On November 6, 2012, the Court of Appeals' Resolution[74] denied Madridejos' Motion for Reconsideration.[75]

Hence, this Petition for Review on Certiorari[76] was filed before this Court.

Madridejos seeks compensation for his sebaceous cyst as an occupational disease.[77] He states that he has already presented substantial evidence to prove his claim that there was a "reasonable connection between his work and the cause of his

---

[68] *Id*. at 54-55.

[69] *Id*. at 54.

[70] *Id*.

[71] *Id*. at 55.

[72] *Id.* at 54.

[73] *Id*. at 55.

[74] *Id.* at 56.

[75] *Id*. at 57-74, Motion for Reconsideration.

[76] *Id*. at 12-53.

[77] *Id*. at 38.

illness."[78] He holds that several medical records and reports have shown that his cyst was aggravated by the conditions of his work as a seaman.[79]

He asserts that his cyst has "impaired his [a]bdomen and upper extremities [causing his] internal organs [to] malfunction."[80] He insists that he "suffer[ed] [from] a physical injury in his [u]pper [e]xtremities . . . [due to] an accident while doing grinding works . . . on board the vessel."[81] Collectively, all these show that his condition was totally work-related, making it compensable.[82]

Moreover, his pre-employment medical record was stamped with "*Fit to work*."[83] This proves that he only incurred the cyst during his employment and it worsened on board the vessel.[84]

He claims that his cyst should be regarded as Permanent Disability Grade 1 because his condition has hindered him to return to work as a seafarer as he is now regularly required to undergo physiotherapy.[85]

Further, Madridejos avers that neither he nor labor tribunals and courts are bound by the medical report of NYK-FIL's company-designated physician; the inherent merits of the case should be considered. [86]

He maintains that NYK-FIL's refusal to heed his demands was induced by "bad faith and malice."[87] He then concludes

---

[78] *Id*. at 39.

[79] *Id*.

[80] *Id*. at 42.

[81] *Id*. at 44.

[82] *Id*. at 46.

[83] *Id*. at 47.

[84] *Id*.

[85] *Id*. at 48.

[86] *Id*. citing *Maunlad Transport, Inc., et al. v. Manigo*, 577 Phil. 319 (2008) [Per *J*. Austria-Martinez, Third Division].

[87] *Id*. at 49.

that the National Labor Relations Commission committed grave abuse of discretion in disregarding his disability compensation, deleting moral damages, and not awarding attorney's fees in his favor.[88]

On January 21, 2013, this Court issued a Resolution[89] requiring NYK-FIL to comment on the Petition.

In its Comment,[90] NYK-FIL belies Madridejos' claim that he was involved in an accident while lifting kitchen equipment on board the vessel.[91] It claims that Madridejos' story was "bare, self-serving, and hearsay as there was no such incident that ever happened on board the vessel and no record of such alleged occurrence exists."[92]

Furthermore, his sebaceous cyst was curable.[93] Thus, it was even completely excised, enabling him "to work for the next two (2) months . . . without any complaint[.]"[94] Additionally, the cyst was already removed under local anesthesia which allegedly connotes that:

By local anesthesia, it simply means that the operation or excision was merely superficial or skin-deep. It is nothing more serious tha[n] excision or extraction of boil or "*pigsa*" in the vernacular. The only

---

[88] *Id*.

[89] *Id.* at 405–406.

[90] *Id*. at 407–438.

[91] *Id*. at 411. "Petitioner alleged on page 10 of the Petition that on 28 April 2010, he was involved in an accident while lifting and carrying Kitchen Equipment aboard the vessel when he accidentally slipped in the metal stairway. According to him, he suddenly felt episodic chest pain and abdominal pains radiating up to the right upper extremity as electric shock. For the alleged incident, Petitioner ties his "SEBACEOUS CYST" to claim disability benefits."

[92] *Id.*

[93] *Id*. at 412.

[94] *Id*.

difference of the sebaceous cyst from boil, is that in the former, what is being extracted is sebum/keratin or "*sebo*" in the vernacular and in the latter is pus or "*nana*" in the vernacular. This explains why only local anesthesia is necessary.[95]

NYK-FIL insists that it has terminated Madridejos' services pursuant to Item 7 of his Employment Agreement and not because of his illness.[96] "[H]e was repatriated . . . three (3) months after his cyst was removed."[97] His silence on the events that transpired between his operation and repatriation confirms NYK-FIL's claim that "[Madridejos] was not repatriated for medical reason[s] but rather due to a valid termination of . . . [his] probationary employment."[98]

Moreover, his assertion that he reported to the local agency to seek medical referral is untrue.[99] Hence, his non-compliance with the compulsory post-employment medical examination leads to the forfeiture of the benefits provided for under Philippine Overseas Employment Agency Standard Employment Contract.[100]

---

[95] *Id*. at 412-413.

[96] *Id*. at 411.

[97] *Id*. at 413.

[98] *Id*.

[99] *Id*.

[100] *Id*. at 414.

Section 20: Compensation and Benefits

. . . .

B. compensation and benefits for injury or illness

. . . .

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is

Finally, it claims that Madridejos is not entitled to moral damages, exemplary damages, or attorney's fees since NYK-FIL did not act in bad faith.[101]

On June 3, 2013, this Court issued a Resolution[102] requiring petitioner to file his Reply to the Comment.

In his Reply,[103] Madridejos claims that NYK-FIL made him appear that he was a "'first time employee' . . . on probationary period for three (3) months."[104] As indicated in the Overseas Filipino Workers Information record of the Philippine Overseas Employment Agency, his employment was merely a re-engagement contract with NYK-FIL.[105] Thus, he could not be under probation.[106]

He maintains that a day after his repatriation, he immediately reported to the manning agency to ask for "referral to the company-designated physician."[107] Technically, he was already under the company's consideration.[108] However, they still failed to conduct his post-employment medical examination insisting that he was not really sick at all.[109]

On October 21, 2013, this Court issued a Resolution[110] requiring the parties to submit their Memoranda.[111]

---

deemed compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

[101] *Id*. at 433.

[102] *Id*. at 438-A.

[103] *Id*. at 439-446.

[104] *Id*. at 439.

[105] *Id*. at 440.

[106] *Id*.

[107] *Id*. at 441.

[108] *Id*. at 442.

[109] *Id*.

[110] *Id*. at 447.

[111] *Id.* at 480-497, Petitioner's Memorandum; *rollo*, pp. 448-479, Respondent's Memorandum.

NYK-FIL maintains that Madridejos is not entitled to disability benefits since he was validly terminated pursuant to the terms of his employment contract.[112]

On the other hand, Madridejos denies that the termination of his probationary contract caused his repatriation. He claims that due to his sebaceous cyst, "he could no longer effectively perform" his job as a Demi Chef; thus, he was terminated.[113]

The Court of Appeals, however, ruled in favor of NYK-FIL. It affirmed the National Labor Relations Commission's finding[114] that Madridejos was repatriated in 2010 not for medical reasons but due to the expiration of his contract as a probationary employee.[115]

The sole issue for this Court's resolution is Madridejos' entitlement to disability benefits.

This petition lacks merit.

I

Madridejos cannot claim disability benefits since he was not medically repatriated.

Since there are conflicting claims in this case, there is necessarily an attack on the factual findings of the labor tribunals and of the Court of Appeals.

As a rule, we only examine questions of law in a Rule 45 petition.[116] Thus, "we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the [National Labor Relations Commission], an administrative body that has expertise in its specialized field."[117]

---

[112] *Id*. at 456.

[113] *Id*. at 487.

[114] *Id*. at 165.

[115] *Id.* at 54.

[116] *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) [Per *J.* Brion, Second Division].

[117] *Id*.

Similarly, we do not replace our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible."[118] The factual findings of the National Labor Relations Commission, when confirmed by the Court of Appeals, are usually "conclusive on this Court."[119]

In this case, we do not see any reason to deviate from the general rule.

Madridejos insists that he could not be on probationary status because he was merely "re-engaged" as evinced by his Overseas Filipino Worker Information.[120] However, "[t]he employment of seafarers and its incidents are governed by the contracts they sign every time they are hired or re-hired. These contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy."[121] Given that he submitted himself with the terms of his contract, NYK-FIL may validly terminate his services pursuant to their agreed terms.

Moreover, Madridejos cannot feign ignorance[122] about his termination letter,[123] which shows his acquiescence through his signature. Also in his Reply[124] to NYK-FIL's Position Paper before the National Labor Relations Commission, he explicitly recognized the termination of his contract stating:

> [I]n fact, several days **prior to the termination of his contract**, complainant was involved in an accident while lifting and carrying

---

[118] *Id*. at 9–10.

[119] *Id*. at 10.

[120] *Rollo*, p. 488.

[121] *Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374, 384 (2014) [Per *J*. Brion, Second Division].

[122] *Rollo*, p. 456.

[123] *Id*. at 358.

[124] *Id*. at 359–372, Reply (to Respondents' Position Paper).

kitchen equipment aboard the vessel, he accidentally slipped in a metal stairway.[125] (Emphasis supplied)

Similarly, a perusal of the records shows that he contested neither the existence of the termination letter nor the authenticity of his signature on it.[126]

II

Madridejos asserts that after the excision of his cyst, he was advised to be repatriated back to the Philippines for further treatment and evaluation, citing the letter of Dr. Byrne.

However, there is nothing in the discharge letter to show that Dr. Byrne explicitly advised Madridejos to go back to the Philippines for further treatment. On the contrary, the letter even confirmed that the excision was merely a minor operation done under a local anesthesia. Hence, the lesion only required three (3) stitches for which Madridejos was immediately discharged back to the vessel after.[127] This bolsters NYK-FIL's claim that Madridejos was not medically repatriated.

Further, the records[128] were bereft of any sign that Madridejos was having issues following his operation, indicating that everything was well after the procedure.[129] As insisted by NYK-FIL, Madridejos was able to regularly work for the next two (2) months after the excision.[130]

Madridejos' passport also shows that he arrived in the Philippines on July 6, 2010[131] or almost three (3) months after his operation on April 29, 2010.[132] As asserted by NYK-FIL,

---

[125] *Id*. at 359.

[126] *Id*. at 456-457.

[127] *Id*. at 165.

[128] *Id.*

[129] *Id*.

[130] *Id*. at 429.

[131] *Id*. at 319.

[132] *Id*. at 164.

Madridejos kept silent on the events that happened during the time between his operation and repatriation.[133] If he was really medically repatriated, then he should have been immediately sent back to the Philippines after his operation. However, he only disembarked from the vessel almost three (3) months after such operation.

Furthermore, Madridejos failed to present any ship record or other pertinent proof to show that he was involved in an accident.[134] His assertions were not corroborated by any written report or testimonies of witnesses.

III

Even assuming that Madridejos was medically repatriated, he still cannot claim for disability benefits since his sebaceous cyst was not work-related.

The Philippine Overseas Employment Administration Standard Employment Contract, which is deemed integrated into Madridejos' employment contract with NYK-FIL, governs his claim for disability benefits.[135] While these guidelines have been recently amended,[136] Philippine Overseas Employment Administration Memorandum Circular No. 9[137] applies in this case since Madridejos signed his contract with NYK-FIL on March 25, 2010.[138]

The requisites for compensable illnesses are provided for under Section 20(B) of Philippine Overseas Employment Administration Memorandum Circular No. 9, Series of 2000:

---

[133] *Id*. at 413.

[134] *Id*. at 164.

[135] *Monana v. MEC Global Shipmanagement and Manning Corp.*, 746 Phil. 736, 745 (2014) [Per *J.* Leonen, Second Division].

[136] *Id*.

[137] The Amended Standard Terms and Conditions governing the Employment of Filipino-Seafarers on Board Ocean-Going Vessels were adopted on June 14, 2000.

[138] *Rollo*, pp. 288 and 329.

Section 20: COMPENSATION AND BENEFITS

. . . .

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers ***work-related*** injury or illness ***during the term of his contract*** *are* as follows . . . (Emphasis supplied)

Madridejos was diagnosed with sebaceous cyst to the right of his umbilicus during the effectivity of his contract as evinced by the findings[139] of Dr. Byrne. Conformably, Labor Arbiter Demaisip affirmed that Madridejos' illness was acquired during the term of his employment contract.[140] Disputed, however, is whether Madridejos' sebaceous cyst was work-related.

In resolving a Rule 45 Petition for Review on Certiorari of a Court of Appeals' Resolution in a Rule 65 Petition for Certiorari, this Court is bound to decide "whether the Court of Appeals was correct in establishing the presence or absence of grave abuse of discretion."[141] In this case, therefore, we determine whether the Court of Appeals properly ruled that the National Labor Relations Commission did not commit grave abuse of discretion in denying Madridejos' claim for disability benefits.[142]

Madridejos insists that his sebaceous cyst was work-related and compensable since the risk of acquiring it increased due to

---

[139] *Id*. at 357.

Re: Mr. Mario MADRIDEJOS. . .

. . . .

Thank you very much for referring along this gentleman who works on your ship who has a ***sebaceous cyst to the right of the umbilicus***. I explained the diagnosis to this gentleman in clinic today. (Emphasis supplied)

[140] *Id*. at 284.

[141] *Dayo v. Status Maritime Corp.*, 751 Phil. 778, 785 (2015) [Per *J*. Leonen, Second Division].

[142] *Id*.

his working conditions.[143] NYK-FIL opposes, claiming that Madridejos' cyst was not attributable to the nature of his job.[144] It asserts that Madridejos failed to show "even a single realistic connection" between his illness and his employment.[145] NYK-FIL says that Madridejos never met any accident and there was no medical or accident report to prove its occurrence.[146]

A work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under ***Section 32-A*** with the conditions set therein satisfied."[147]

Section 32-A provides:

Section 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein.

A sebaceous cyst is not included under Section 32[148] or 32-A[149] of the 2000 Philippine Overseas Employment Agency

[143] *Rollo*, p. 488.

[144] *Id*. at 465-466.

[145] *Id*. at 466.

[146] *Id*. at 464.

[147] POEA Memorandum Circular No. 9 (2000) or the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

[148] Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted.

[149] Occupational Diseases.

Standard Employment Contract. However, the guidelines expressly provide that those illnesses not listed in Section 32 "are ***disputably presumed*** as work[-]related."[150]

Similarly, for an illness to be compensable, "it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer."[151] It is enough that there is "a ***reasonable linkage*** between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had."[152]

The disputable presumption implies "that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits."[153] Similarly, "the disputable presumption does not signify an automatic grant of compensation and/or benefits claim."[154] There is still a need for the claimant to establish, through substantial evidence, that his illness is work-related.[155]

"Substantial evidence is more than a mere scintilla."[156] It should attain "the level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion."[157]

---

[150] *Id*. at Section 20(B).

[151] *Dayo v. Status Maritime Corp*., 751 Phil. 778, 789 (2015) [Per *J*. Leonen, Second Division] citing *Magsaysay Maritime Services v. Laurel*, 707 Phil. 210 (2013) [Per *J*. Mendoza, Third Division].

[152] *Id*.

[153] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 388 (2014) [Per *J*. Brion, Second Division].

[154] *Id*.

[155] *Id*.

[156] *Talosig v. United Philippine Lines, Inc.*, 739 Phil. 774, 783 (2014) [Per *C.J*. Sereno, First Division].

[157] *Id.*

Madridejos cannot solely rely on the disputable presumption.[158] For his failure to substantiate his claim that his cyst was either work-related or work-aggravated, this Court cannot grant him relief.[159]

Accordingly, the disputable presumption "does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness."[160] Concomitantly, there is still a need for him to corroborate his claim for disability benefits.[161]

"A sebaceous cyst is a small, dome-shaped cyst or sac that develops in the skin. It is filled with a thick, greasy, cream-cheese like substance (called sebaceous material) that slowly fills up the cyst over many years."[162] It occurs "in a hair follicle, which has a small duct opening onto the surface of the skin. The duct becomes plugged with a sticky material and the secretions from the cyst gradually build up and cause it to expand."[163]

Sebaceous cysts "are usually harmless, but the main risk is infection by bacteria." In which case, the cysts "become enlarged, red, inflamed and tender."[164] Also, the cysts may later rupture and discharge "a foul-smelling pus."[165]

An "obtrusive or unsightly" sebaceous cyst can be excised through "a simple operation for which you will be given a local

---

[158] *Quizora v. Denholm Crew Management (Philippines), Inc.*,676 Phil. 313, 327 (2011) [Per *J.* Mendoza, Third Division].

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] See Sebacious cysts, available at < http://www.nevdgp.org.au/info/murtagh/pdf/SEBCYSTS010216.pdf. > (Last visited April 7, 2017).

[163] *Id.*

[164] *Id.*

[165] *Id.*

anaesthetic" where "a simple incision is made in the skin overlying the cyst, the sac is removed and the wound is closed with stitches."[166]

The findings of the National Labor Relations Commission, as affirmed by the Court of Appeals, are consistent with the nature of a sebaceous cyst:

> It is simply a slow-growing pea-size[d] sac growth under the skin that develops as a result of infection, clogging of sebaceous glands (oil gland), or around foreign bodies, such as earrings. It can develop in any part of the body, and at times it just simply disappears.[167]

Madridejos insists that he suffered an injury in his upper extremities due to an accident that he had encountered "while doing grinding works . . . on board the vessel."[168] He alleges that this incident had caused the development of his cyst.[169]

Surprisingly, however, Madridejos argued differently in his Memorandum[170] by saying that, as found by the National Labor Relations Commission, a sebaceous cyst could "develop as [a] result of [an] infection."[171] He then shifted to a new contention blaming the vessel's unhealthy environment as the cause of an infection which might have probably triggered the occurrence of his sebaceous cyst.[172]

Madridejos has not enumerated either the scope of his job or his regular tasks as a Demi Chef that would supposedly show the correlation of his employment to the development of his cyst. Similarly, he has failed to provide this Court with an overview of significant working conditions that might have

---

[166] *Id*.

[167] *Rollo,* p. 55.

[168] *Id*. at 44.

[169] *Id.*

[170] *Id*. at 480-497.

[171] *Id*. at 490.

[172] *Id*.

possibly contributed to the acquisition or aggravation of his illness. Instead, he has merely made sweeping assertions about it.

Regrettably, Madridejos has failed to prove that the development of cyst was due to the nature of his job as a Demi Chef. For this reason, this Court cannot presuppose that it is work-related.

Furthermore, it was already settled that Madridejos was not repatriated due to his alleged medical condition but due to the expiration of his contract as a probationary employee. For this reason, therefore, it becomes unnecessary for NYK-FIL to overcome the disputable presumption that Madridejos' illness was work-related.

IV

Madridejos insists that his Pre-Employment Medical Examination showed that he was "fit to work" before he commenced employment.[173] This proves that he incurred his illness during his service and was only aggravated when he was on board.[174]

"A seafarer only needs to pass the mandatory [Pre-Employment Medical Examination] in order to be deployed on duty at sea."[175] A Pre-Employment Medical Examination cannot be relied upon to reflect a "seafarer's true state of health" since it is not exploratory and may just disclose enough for employers to decide whether a "seafarer is fit for overseas employment."[176] Due to the nature of a Pre-Employment Medical Examination, it is possible that Madridejos' sebaceous cyst was not detected prior to his employment.

---

[173] *Id*. at 47.

[174] *Id.*

[175] *Francisco v. Bahia Shipping Services, Inc.*, 650 Phil. 200, 206 (2010) [Per *J.* Carpio Morales, Third Division].

[176] *NYK-Fil Ship Management Inc. v. National Labor Relations Commission*, 534 Phil. 725, 739 (2006) [Per *J*. Carpio Morales, Third Division].

Nevertheless, NYK-FIL has not been remiss in its duty to provide Madridejos with all the necessary aid. When he was diagnosed with a sebaceous cyst, he was immediately referred to a hospital where all the expenses were shouldered by the company.[177] This assertion was not contradicted by Madridejos.

Given that Madridejos' repatriation was due to the termination of his service contract, there was no bad faith on the part of NYK-FIL. Accordingly, we deny Madridejos' claim for moral damages and attorney's fees.

The Constitutional mandate in providing full protection to labor "is not meant to be a sword to oppress employers."[178] This Court's assurance to this policy does not stop us from upholding "the employer when it is in the right."[179] Thus, when evidence contradicts compensability, the claim cannot prosper, otherwise it "causes injustice to the employer."[180]

WHEREFORE, the petition is **DENIED**. The assailed September 26, 2012 and November 6, 2012 Resolutions of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.*, concur.

Mendoza and *Martires, JJ.*, on official leave.

---

[177] *Rollo*, p. 473.

[178] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, 630 Phil. 352, 369 (2010) [Per *J.* Brion, Second Division].

[179] *Id.*

[180] *Francisco v. Bahia Shipping Services, Inc.*, 650 Phil. 200, 207 (2010) [Per *J.* Carpio Morales, Third Division].

THIRD DIVISION

[G.R. No. 205283. June 7, 2017]

ABIGAIL L. MENDIOLA, *petitioner, vs.* **VENERANDO P. SANGALANG,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; RESOLVING DEFENSE OF OWNERSHIP; THE ISSUE OF OWNERSHIP MAY BE RESOLVED ONLY TO DETERMINE THE ISSUE OF POSSESSION.—** In arriving at its identical pronouncement that petitioner failed to prove her better right of possession, the RTC and the CA passed upon the parties' respective claim of ownership, a procedure that is sanctioned under Section 16, Rule 70. It is settled that the issue of ownership may be resolved only to determine the issue of possession. To prove their right of possession, petitioner and Vilma harp on their claim as registered owners while respondent claims entitlement thereto as a co-heir. We find no error when the RTC and the CA decided the case in favor of respondent.

2. **CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; WHEN THE INSTRUMENT PRESENTED IS FORGED, THE REGISTERED OWNER DOES NOT LOSE HIS TITLE, AND NEITHER DOES THE ASSIGNEE IN THE FORGED DEED ACQUIRE ANY RIGHT OR TITLE TO THE PROPERTY.—** In this case, it is undisputed that the Deed of Sale, through which ownership over the property had been purportedly transferred to the petitioner and Vilma, was executed in 1996. However, it is perfectly obvious that Honorata could not have signed the same as she passed away as early as 1994. If any, Honorata's signature thereon could only be a product of forgery. This makes the Deed of Sale void and as such, produces no civil effect; and it does not create, modify, or extinguish a juridical relation. x x x While it is true that petitioner and Vilma have in their favor a Torrens title over the property, it is nonetheless equally true that they acquired

no right under the void Deed of Sale. Indeed, when the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property.

3. **ID.; PRESCRIPTION OF ACTIONS; AN ACTION TO DECLARE THE NULLITY OF A VOID TITLE DOES NOT PRESCRIBE AND IS SUSCEPTIBLE TO DIRECT, AS WELL AS TO COLLATERAL ATTACK.—** With the determination that petitioner and Vilma's title is void, the issue as to whether it is subject to direct or collateral attack is no longer relevant. Settled is the rule that an action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral attack. Hence, respondent is not precluded from questioning the validity of the petitioner and Vilma's title in the *accion publiciana*.

APPEARANCES OF COUNSEL

Eduardo J.F. Pabella for petitioner.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review[1] under Rule 45 are the Decision[2] dated March 23, 2012 and Resolution[3] dated January 15, 2013 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 91072 which affirmed the Decision[5] of the Regional Trial Court

---

[1] *Rollo*, pp. 7-21, with Annexes.

[2] *Id.* at 53-65.

[3] *Id.* at 67-69.

[4] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Franchito N. Diamante and Myra G. Fernandez.

[5] Entitled "*Abigail L. Mendiola & Vilma L. Aquino (a.k.a. Vilma L. Sapida), Plaintiffs, versus Venerando P. Sangalang, Defendant*" and docketed as Civil Case No. Q-05-56563; *Rollo*, pp. 45-49.

(RTC)[6], Branch 218 in Quezon City, dismissing petitioner's *accion publiciana* for failure to prove the better right of possession.

The Antecedent Facts

The property subject of the instant controversy is a parcel of land located at No. 104 Maginhawa Street, Brgy. Teachers Village East, Diliman, Quezon City, on which a residential house and a four-door, one-storey commercial building were built. Said property was originally registered in the name of Honorata G. Sangalang (Honorata).[7]

Honorata had two siblings, Sinforosa and Angel. Sinforosa had three children, petitioner Abigail Mendiola, Vilma Aquino (Vilma) and Azucena De Leon; while Angel begot four children, respondent Venerando, Ma. Lourdes, Angelino and Fernando, all surnamed Sangalang. Sinforosa and Angel predeceased Honorata, and on May 31, 1994, Honorata herself died intestate without any issue.[8]

While Honorata was still alive, one-half of the residential house of the subject property was being used by petitioner and the other half by Vilma's son. The commercial building, on the other hand, was being leased to third persons. This set-up continued until after Honorata's death.[9]

In 2003, respondent and his siblings discovered that the subject property was already registered in the names of petitioner and Vilma. Upon verification, they discovered that the title over the property had been transferred in favor of petitioner and Vilma by virtue of a Deed of Sale dated January 29, 1996 purportedly executed by Honorata in their favor. Consequently,

---

[6] Penned by Judge Hilario L. Laqui.

[7] See Answer; *Rollo*, p. 30.

[8] *Supra* note 5, at 46.

[9] *Id*.

a new title, TCT No. N-148021,[10] was issued in the names[11] of petitioner and Vilma.

It was around this time, or in July 2003, after Vilma's son left the residential house, that respondent, allegedly without asking permission from the petitioner or Vilma and with the use of force and violence upon things, broke open the door of the unit and had since detained the same.[12]

On April 11, 2005, petitioner and Vilma demanded that respondent vacate the unit but the latter refused to do so.[13] The dispute was referred to the *barangay* for conciliation but no settlement was reached.[14] Consequently, on October 18, 2005, petitioner and Vilma commenced their complaint[15] for *accion publiciana* against respondent for the latter to return the illegally occupied unit and to pay reasonable rental therefor.

In his Answer,[16] respondent claimed that as heirs of Honorata, they all have become co-owners in equal undivided shares of the subject property. Respondent further disputes the Deed of Sale through which ownership over the property was transferred to the petitioner and Vilma, since the same was executed only in 1996 after Honorata died in 1994.

The Ruling of the RTC

On November 15, 2007, the RTC rendered its Decision[17] dismissing the complaint. The trial court noted that since respondent raised the defense of co-ownership, the case was converted from *accion publiciana* to *accion reivindicatoria*. It

---

[10] *Rollo*, p. 26.

[11] *Supra* note 8.

[12] *Id*. at 45.

[13] *Rollo*, p. 27.

[14] *Id*. at p. 28.

[15] *Id*. at 23-25.

[16] *Id*. at 29-42.

[17] *Supra* note 5.

further noted that since it is undisputed that the parties are all heirs of Honorata, then they all have an equal right thereto. Finally, the trial court noted that the resolution of the criminal complaint for falsification lodged by respondent against the petitioner and Vilma constitutes a prejudicial question to the complaint.[18]

The RTC thus disposed:

> **WHEREFORE**, finding that the plaintiffs failed to discharge their burden of proof that they have better right to the property in dispute, the complaint is hereby DISMISSED. However, plaintiffs are ordered to pay, jointly and severally, the defendant, the amount of ₱10,000.00 as and by way of attorney's fees.
>
> **SO ORDERED.**[19]

Petitioner and Vilma's motion for reconsideration was similarly rebuffed by the trial court.[20] Undaunted, they elevated the case to the CA on appeal raising as sole error the trial court's conversion of the complaint from *accion publiciana* to *accion reivindicatoria* and in consequently ruling in favor of respondent. They insisted that they do not seek to recover ownership of the subject property but merely its possession.[21]

The Ruling of the CA

The CA denied the appeal.[22] While the appellate court disagreed with the trial court when it converted the complaint to *accion reivindicatoria*, it nevertheless agreed with the trial court when it dismissed the complaint for *accion publiciana*, for failure to prove the better right of possession. In provisionally passing upon the issue of ownership to resolve the issue of possession, the CA held that the parties, being co-owners *pro*

---

[18] *Id*. at 48.

[19] *Supra* note 5, at 48-49.

[20] *See* Resolution dated February 14, 2008; *Rollo*, pp. 51-52.

[21] *Id*. at 57.

[22] *Supra*, note 2.

indiviso of the subject property, have equal right to possess the same.[23]

Accordingly, the CA disposed:

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The decision of the RTC of Quezon City, Branch 218 dated 15 November 2007 is **AFFIRMED**, not because the case was deemed converted to an accion reivindicatoria but for the reason that plaintiffs-appellants failed to prove that they have the better right of possession over the property.

SO ORDERED.[24]

Petitioner and Vilma's motion for reconsideration suffered the same rejection from the CA.[25] Hence, the instant petition filed solely by the petitioner.

The Issue

The point of inquiry is whether the petitioner has the better right of possession over the subject property as to successfully evict respondent.

The Ruling of this Court

The petition is devoid of merit.

In arriving at its identical pronouncement that petitioner failed to prove her better right of possession, the RTC and the CA passed upon the parties' respective claim of ownership, a procedure that is sanctioned under Section 16,[26] Rule 70. It is settled that the issue of ownership may be resolved only to determine the issue of possession.

---

[23] *Id*. at 63.

[24] *Id*. at 64.

[25] *Supra*, note 3.

[26] Sec. 16. Resolving defense of ownership. — When the defendant 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.

To prove their right of possession, petitioner and Vilma harp on their claim as registered owners while respondent claims entitlement thereto as a co-heir. We find no error when the RTC and the CA decided the case in favor of respondent.

In this case, it is undisputed that the Deed of Sale, through which ownership over the property had been purportedly transferred to the petitioner and Vilma, was executed in 1996. However, it is perfectly obvious that Honorata could not have signed the same as she passed away as early as 1994. If any, Honorata's signature thereon could only be a product of forgery. This makes the Deed of Sale void and as such, produces no civil effect; and it does not create, modify, or extinguish a juridical relation.

The Court cannot simply close its eyes against such patent defect on the argument that registered owners of a property are entitled to its possession.

While it is true that petitioner and Vilma have in their favor a Torrens title over the property, it is nonetheless equally true that they acquired no right under the void Deed of Sale. Indeed, when the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property.[27]

In *Spouses Reyes v. Montemayor*,[28] the Court explains:

> Insofar as a person who fraudulently obtained a property is concerned, the registration of the property in said person's name would not be sufficient to vest in him or her the title to the property. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of the Torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility. A Torrens

---

[27] *Heirs of Victorino Sarili v. Lagrosa*, G.R. No. 193517, January 15, 2014, 713 SCRA 726, 739-740, citing *Spouses Bernales v. Heirs of Julian Sambaan*, 624 Phil. 88 (2010).

[28] 614 Phil. 256, 274-275 (2009).

title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.[29]

Neither can the argument that a certificate of title is not subject to collateral attack would persuade Us to rule otherwise. With the determination that petitioner and Vilma's title is void, the issue as to whether it is subject to direct or collateral attack is no longer relevant. Settled is the rule that an action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral attack.[30] Hence, respondent is not precluded from questioning the validity of the petitioner and Vilma's title in the *accion publiciana*.[31]

A necessary and logical consequence of the foregoing pronouncements is that, title over the property remained in the name of Honorata as original registered owner thereof. By theory of succession, petitioner and respondent are co-owners of the property and equally entitled to possession thereof, either *de facto* or *de jure*. As such, petitioner and Vilma had no right to exclude respondent from enjoying possession thereof through a possessory action.

Finally, there being no further argument against the award of attorney's fees, We have no resort but to affirm the same.

WHEREFORE, the petition is **DENIED**. The Decision dated March 23, 2012 and Resolution dated January 15, 2013 of the Court of Appeals in CA G.R. CV No. 91072 dismissing petitioner's complaint for *accion publiciana* and awarding attorney's fees in respondent's favor are **AFFIRMED *in toto***.

SO ORDERED.

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

---

[29] *Id*.

[30] *Spouses De Guzman v. Agbagala*, 569 Phil. 607, 614 (2008).

[31] *Romero and Domingo v. Singson*, G.R. No. 200969, August 3, 2015.

FIRST DIVISION

[G.R. No. 205428. June 7, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **SPOUSES SENANDO F. SALVADOR and JOSEFINA R. SALVADOR,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS; FILING BY REGISTERED MAIL; THE DATE OF THE MAILING SHALL BE CONSIDERED AS THE DATE OF FILING.—** "Section 3, Rule 13 of the Rules of Court provides that if a pleading is filed by registered mail, x x x **the date of mailing shall be considered as the date of filing.** It does not matter when the court actually receives the mailed pleading."

2. **POLITICAL LAW; STATE POWERS; EMINENT DOMAIN; JUST COMPENSATION; DETERMINATION THEREOF; CAPITAL GAINS TAX IS NOT INCLUDED AS A CONSEQUENTIAL DAMAGE.—** "Just compensation [is defined as] the full and fair equivalent of the property sought to be expropriated. x x x The measure is not the taker's gain but the owner's loss. [The compensation, to be just,] must be fair not only to the owner but also to the taker." In order to determine just compensation, the trial court should first ascertain the market value of the property by considering the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon. If as a result of the expropriation, the remaining lot suffers from an impairment or decrease in value, consequential damages may be awarded by the trial court, provided that the consequential benefits which may arise from the expropriation do not exceed said damages suffered by the owner of the property. While it is true that "the determination of the amount of just compensation is within the court's discretion, it should not be done arbitrarily or capriciously. [Rather,] **it must [always] be based on all**

established rules, upon correct legal principles and competent evidence." The court cannot base its judgment on mere speculations and surmises. In the present case, the RTC deemed it "fair and just that x x x whatever is the value of the capital gains tax and all other taxes necessary for the transfer of the subject property to the [Republic] are but consequential damages that should be paid by the latter." x x x This is clearly an error. It is settled that **the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24(D) and 56(A)(3) of the National Internal Revenue Code,** and profit from the transaction constitutes capital gain. Since capital gains tax is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax. x x x [A]s previously explained, consequential damages are only awarded *if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the August 23, 2012 Decision[1] and the January 10, 2013 Order[2] of the Regional Trial Court (RTC), Branch 270, Valenzuela City, in Civil Case No. 175-V-11 which directed petitioner Republic of the Philippines (Republic) to pay respondents spouses Senando F. Salvador and Josefina R. Salvador consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the expropriated property in the Republic's name.

---

[1] *Rollo*, pp. 22-25; penned by Presiding Judge Evangeline M. Francisco.

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

The Antecedent Facts

Respondents are the registered owners of a parcel of land with a total land area of 229 square meters, located in Kaingin Street, *Barangay* Parada, Valenzuela City, and covered by Transfer Certificate of Title No. V-77660.[3]

On November 9, 2011, the Republic, represented by the Department of Public Works and Highways (DPWH), filed a verified Complaint[4] before the RTC for the expropriation of 83 square meters of said parcel of land (subject property), as well as the improvements thereon, for the construction of the C-5 Northern Link Road Project Phase 2 (Segment 9) from the North Luzon Expressway (NLEX) to McArthur Highway.[5]

On February 10, 2012, respondents received two checks from the DPWH representing 100% of the zonal value of the subject property and the cost of the one-storey semi-concrete residential house erected on the property amounting to ₱161,850.00[6] and ₱523,449.22,[7] respectively.[8] The RTC thereafter issued the corresponding Writ of Possession in favor of the Republic.[9]

On the same day, respondents signified in open court that they recognized the purpose for which their property is being expropriated and interposed no objection thereto.[10] They also manifested that they have already received the total sum of ₱685,349.22 from the DPWH and are therefore no longer intending to claim any just compensation.[11]

---

[3] Records, pp. 16-17.

[4] *Id*. at 1-15.

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

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

[7] *Id.* at 56-57.

[8] *Rollo,* p. 10.

[9] *Id*.

[10] Records, p. 67.

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

Ruling of the Regional Trial Court

In its Decision[12] dated August 23, 2012, the RTC rendered judgment in favor of the Republic condemning the subject property for the purpose of implementing the construction of the C-5 Northern Link Road Project Phase 2 (Segment 9) from NLEX to McArthur Highway, Valenzuela City.[13]

The RTC likewise directed the Republic to pay respondents consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the subject property in the Republic's name.[14]

The Republic moved for partial reconsideration,[15] specifically on the issue relating to the payment of the capital gains tax, but the RTC denied the motion in its Order[16] dated January 10, 2013 for having been belatedly filed. The RTC also found no justifiable basis to reconsider its award of consequential damages in favor of respondents, as the payment of capital gains tax and other transfer taxes is but a consequence of the expropriation proceedings.[17]

As a result, the Republic filed the present Petition for Review on *Certiorari* assailing the RTC's August 23, 2012 Decision and January 10, 2013 Order.

Issues

In the present Petition, the Republic raises the following issues for the Court's resolution: *first,* whether the RTC correctly denied the Republic's Motion for Partial Reconsideration for having been filed out of time;[18] and *second,* whether the capital gains

---

[12] *Id*. at 22-25.

[13] *Id*. at 25.

[14] *Id*.

[15] Records, pp. 121-126.

[16] *Rollo,* pp. 26-27.

[17] *Id*. at 27.

[18] *Id*. at 16.

tax on the transfer of the expropriated property can be considered as consequential damages that may be awarded to respondents.[19]

The Court's Ruling

The Petition is impressed with merit.

"Section 3, Rule 13 of the Rules of Court provides that if a pleading is filed by registered mail, x x x **the date of mailing shall be considered as the date of filing**. It does not matter when the court actually receives the mailed pleading."[20]

In this case, the records show that the Republic filed its Motion for Partial Reconsideration before the RTC via registered mail on September 28, 2012.[21] Although the trial court received the Republic's motion only on October 5, 2012,[22] it should have considered the pleading to have been filed on September 28, 2012, the date of its mailing, which is clearly within the reglementary period of 15 days to file said motion,[23] counted from September 13, 2012, or the date of the Republic's receipt of the assailed Decision.[24]

Given these circumstances, we hold that the RTC erred in denying the Republic's Motion for Partial Reconsideration for having been filed out of time.

We likewise rule that the RTC committed a serious error when it directed the Republic to pay respondents consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the subject property.

"Just compensation [is defined as] the full and fair equivalent of the property sought to be expropriated. x x x The measure

---

[19] *Id*. at 12-13.

[20] *Russel v. Ebasan*, 633 Phil. 384, 390-391 (2010). Emphasis supplied.

[21] *Rollo*, p. 27. See also records, p. 128.

[22] *Id*.

[23] See RULES OF COURT, Rule 37, Section 1, in relation to Rule 41, Section 3.

[24] *Rollo,* p. 16.

is not the taker's gain but the owner's loss. [The compensation, to be just,] must be fair not only to the owner but also to the taker."[25]

In order to determine just compensation, the trial court should first ascertain the market value of the property by considering the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon.[26] If as a result of the expropriation, the remaining lot suffers from an impairment or decrease in value, consequential damages may be awarded by the trial court, provided that the consequential benefits which may arise from the expropriation do not exceed said damages suffered by the owner of the property.[27]

While it is true that "the determination of the amount of just compensation is within the court's discretion, it should not be done arbitrarily or capriciously. [Rather,] **it must** [**always**] **be based on all established rules, upon correct legal principles and competent evidence**."[28] The court cannot base its judgment on mere speculations and surmises.[29]

In the present case, the RTC deemed it "fair and just that x x x whatever is the value of the capital gains tax and all other taxes necessary for the transfer of the subject property to the [Republic] are but consequential damages that should be paid by the latter."[30] The RTC further explained in its assailed Order that said award in favor of respondents is but equitable, just, and fair, *viz.*:

---

[25] *Republic v. Court of Appeals*, 612 Phil. 965, 977 (2009).

[26] *Id*.

[27] *Id*. at 980-981, citing *B.H. Berkenkotter & Co. v. Court of Appeals*, 290-A Phil. 371, 374 (1992).

[28] *National Power Corporation v. Dr. Bongbong*, 549 Phil. 93, 107 (2007). Emphasis supplied.

[29] *Manansan v. Republic*, 530 Phil. 104, 118 (2006).

[30] *Rollo*, p. 25.

As aptly pointed out by [respondents], they were merely forced by circumstances to be dispossessed of [the] subject property owing to the exercise of the State of its sovereign power to expropriate. **The payment of capital gains tax and other transfer taxes is a consequence of the expropriation proceedings.** It is in the sense of equity, justness and fairness, and as upheld by the Supreme Court in the case of *Capitol Subdivision, Inc. vs. Province of Negros Occidental*, G.R. No. L-16257, January 31, 1963, that the assailed consequential damages was awarded by the court.[31]

This is clearly an error. It is settled that **the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24(D) and 56(A)(3) of the National Internal Revenue Code**, and profit from the transaction constitutes capital gain.[32] Since capital gains tax is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax.[33]

In fact, the Bureau of Internal Revenue (BIR), in BIR Ruling No. 476-2013 dated December 18, 2013, has constituted the DPWH as a withholding agent tasked to withhold the 6% final withholding tax in the expropriation of real property for infrastructure projects. Thus, as far as the government is concerned, **the capital gains tax in expropriation proceedings remains a liability of the seller**, as it is a tax on the seller's gain from the sale of real property.[34]

Besides, as previously explained, consequential damages are only awarded *if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value.*[35] In this case, no evidence was submitted to prove any impairment or decrease in value of the subject property as

---

[31] *Id*. at 26-27. Emphasis supplied.

[32] See *Gutierrez v. Court of Tax Appeals*, 101 Phil. 713, 721-722 (1957).

[33] *Republic v. Soriano*, G.R. No. 211666, February 25, 2015, 752 SCRA 71, 87.

[34] *Id*.

[35] *Republic v. Court of Appeals*, *supra* note 27 at 980-981.

a result of the expropriation. More significantly, given that the payment of capital gains tax on the transfer of the subject property has no effect on the increase or decrease in value of the remaining property, it can hardly be considered as consequential damages that may be awarded to respondents.

WHEREFORE, we **GRANT** the Petition for Review on *Certiorari.* The Decision dated August 23, 2012 and the Order dated January 10, 2013 of the Regional Trial Court, Branch 270, Valenzuela City, in Civil Case No. 175-V-11, are hereby **MODIFIED**, in that the award of consequential damages is **DELETED**. In addition, spouses Senando F. Salvador and Josefina R. Salvador are hereby **ORDERED** to pay for the capital gains tax due on the transfer of the expropriated property.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 206008. June 7, 2017]

DELFIN DOMINGO DADIS, *petitioner, vs.* **SPOUSES MAGTANGGOL DE GUZMAN and NORA Q. DE GUZMAN, and THE REGISTER OF DEEDS OF TALAVERA, NUEVA ECIJA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES LIE OUTSIDE THE SCOPE OF A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTIONS; MISAPPREHENSION OF FACTS.—** As a rule, the issue of whether a mortgagee is in good faith cannot be entertained in

a Rule 45 petition because the ascertainment of good faith or the lack thereof and the determination of negligence are factual issues which lie outside the scope of a petition for review on *certiorari*. This Court is not a trier of facts and is not into re-examination and re-evaluation of testimonial and documentary evidence on record. An exception, which the present case falls under, is when there is a misapprehension of facts or when the inference drawn from the facts is manifestly mistaken.

2. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; DOCTRINE OF MORTGAGEE IN GOOD FAITH; PROTECTION ACCORDED TO MORTGAGEES IN GOOD FAITH CANNOT BE EXTENDED TO MORTGAGEES OF PROPERTIES THAT ARE NOT YET REGISTERED WITH THE REGISTER OF DEEDS (RD) UNDER THE MORTGAGOR'S NAME.—** The doctrine of mortgagee in good faith presupposes that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his or her name and that, after obtaining the said title, he or she succeeds in mortgaging the property to another who relies on what appears on the said title. x x x The protection accorded by law to mortgagees in good faith cannot be extended to mortgagees of properties that are not yet registered with the RD or registered but not under the mortgagor's name. When the mortgagee does not directly deal with the registered owner of the real property, like an attorney-in-fact of the owner, it is incumbent upon the mortgagee to exercise greater care and a higher degree of prudence in dealing with such mortgagor. x x x [T]he status of a mortgagee in good faith is never presumed but must be proven by the person invoking it. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another. x x x A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent mortgagee for value.

3. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS AS EVIDENCE; IN NOTARIZED DOCUMENTS, WHEN NOTARIZATION IS DEFECTIVE, THE PUBLIC CHARACTER OF THE DOCUMENT IS STRIPPED OFF AND IT IS REDUCED TO A MERE PRIVATE DOCUMENT.—** Under Section 23,

Rule 132 of the Rules, not all types of public documents are deemed *prima facie* evidence of the facts therein stated. Although classified as a public document, a notarized document is merely evidence of the fact which gave rise to their execution and of the date of the latter. When the notarization is defective, the public character of the document is stripped off and it is reduced to a mere private document that should be examined under the parameters of Section 20, Rule 132 of the Rules, providing that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either *(a)* [b]y anyone who saw the document executed or written, or *(b)* [b]y evidence of the genuineness of the signature or handwriting of the maker."

4. **CIVIL LAW; FAMILY CODE; CONJUGAL PARTNERSHIP; THE ENCUMBRANCE OF CONJUGAL PROPERTY WITHOUT THE CONSENT OF THE HUSBAND WAS VOID AND CANNOT BE VALIDATED.—** The sale (or encumbrance) of conjugal property without the consent of the husband was not merely voidable but void; hence, it could not be ratified. A void contract is equivalent to nothing and is absolutely wanting in civil effects; it cannot be validated either by ratification or prescription. x x x As the forged Special Power of Attorney (SPA) and Real Estate Mortgage (REM) are void *ab initio*, the foreclosure proceedings conducted on the strength thereof suffer from the same infirmity.

APPEARANCES OF COUNSEL

Bauto Bauto & Flores Law Offices for petitioner.
Rosita L. Dela Fuente-Torres for respondents.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to annul the July 30, 2012 Decision[1]

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Edwin D. Sorongon concurring; *rollo*, pp. 67-79.

and February 13, 2013 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 87784, which reversed and set aside the November 10, 2005 Decision[3] and January 25, 2006 Order[4] of Regional Trial Court *(RTC)*, Branch 33, Guimba, Nueva Ecija, and, in effect, dismissed the complaint filed by petitioner.

On September 8, 2003, petitioner Delfin Domingo Dadis *(Delfin)* filed a Complaint[5] for reconveyance and damages against respondents Spouses Magtanggol De Guzman *(Magtanggol)* and Nora Q. De Guzman *(Nora)* and the Register of Deeds *(RD)* of Talavera, Nueva Ecija. Delfin alleged that: he and his deceased wife, Corazon Pajarillaga Dadis *(Corazon)*, were the registered owners of a 33,494-square meter parcel of land located at Guimba, Nueva Ecija and covered by Transfer Certificate of Title *(TCT)* No. (NT-133167) N-19905;[6] on December 11, 1996, their daughter, Marissa P. Dadis *(Marissa)*, entered into a contract of real estate mortgage *(REM)* over the subject property in favor of Magtanggol to secure a loan obligation of ₱210,000.00 that was payable on or before February 1997;[7] the Spouses De Guzman made it appear that Marissa was authorized by the Spouses Dadis by virtue of a Special Power of Attorney *(SPA)* dated December 10, 1996;[8] the SPA was a forged document because it was never issued by him or Corazon as the signatures contained therein are not theirs, especially so since he was in the United States of America *(USA)* at the time; it was only in November 1999, when Corazon died, that Magtanggol informed him of the transaction, but he could not remedy the situation as he had to go back to the USA in December 1999; when he returned to the Philippines in April 2002, he executed a SPA

---

[2] *Id*. at 81.

[3] CA *rollo*, pp. 39-44; records, pp. 105-109.

[4] *Id*. at 45-46; *id*. at 133-134.

[5] Records, pp. 2-7.

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

[7] *Id*. at 10.

[8] *Id*. at 11.

in favor of a friend, Eduardo Gunsay, to look into the matter and make the necessary actions; in 2003, he was able to procure copies of the documents pertaining to the mortgage, including the cancellation of their title and the issuance of a new one, TCT No. N-26572,[9] in favor of the Spouses De Guzman; after his verification, he immediately caused the filing of an Affidavit of Adverse Claim, which was annotated at the back of TCT No. N-26572;[10] neither he nor his family benefited from the loan secured by the mortgage; no demand letter, as well as notices of the foreclosure proceedings and the consolidation of title, were sent to him; and, in view of these, he is entitled to receive from the Spouses De Guzman the amounts of ₱200,000.00 as moral damages, ₱500,000.00 as exemplary damages, ₱20,000.00 plus ₱1,000.00, per hearing as attorney's fees, interests, and other costs of suit.

In their Answer with Motion to Dismiss,[11] the Spouses De Guzman countered that Delfin has no cause of action against them, stating that: they have no knowledge as regards the supposed falsity of the SPA presented by Marissa and Corazon at the time the latter pleaded to accommodate them into entering a mortgage contract; they have no knowledge that Delfin was not in the Philippines at the time of the execution of the SPA, which, as a duly-notarized document, was presumed to have been done regularly; Delfin defaulted in paying the obligation despite several repeated demand, as in fact they even proceeded to his house in November 1999 and were able to talk to him; in view of his admission that he could not pay the amount involved, they were constrained to cause the registration of the REM with the RD on May 21, 2001; to give him enough time and opportunity to reacquire the property, it was only after three years from the time the obligation became due that they pursued and effected the foreclosure of the property; considering that he still failed to pay the obligation, the property was

---

[9] *Id.* at 12.

[10] *Id.*

[11] *Id*. at 21-26.

foreclosed on August 21, 2001, with them (*Spouses De Guzman*) as the highest bidder; as the property was not redeemed, the title thereto was consolidated in their names and TCT No. N-26572 was issued in their favor; they were in good faith from the time the property was mortgaged until it was foreclosed and they were able to help Delfin's family, who was financially distressed at the time; and, an action to annul the SPA executed in 1996 already prescribed. By way of counterclaim, the Spouses De Guzman pleaded that Delfin be ordered to pay them the amounts of ₱500,000.00 as moral damages, ₱500,000.00 as exemplary damages, ₱20,000.00 as attorney's fees, ₱20,000.00 as litigation expenses, and costs of suit.

After trial, the RTC established that Delfin was not in the Philippines on December 10, 1996 since, per his testimony that was corroborated by Martina Palaganas *(Martina)*, he was in the USA from November 24, 1995 until he went home on November 13, 1999 when Corazon died; thus, he could not have signed the SPA authorizing Marissa to mortgage the property. Without his written consent, the mortgage is void since such act is not merely an act of administration but of ownership or dominion on the part of Corazon. Evidence on record, however, does not show that Magtanggol had a hand in the preparation of the SPA. Being duly notarized, he had the right to rely on what such public document purported to be. The presumption of good faith in his favor was not overcome. The trial court ruled that while the mortgage is void, the obligation of Corazon to Magtanggol is valid because the money she received redounded to the benefit of the family. The November 10, 2005 Decision disposed:

WHEREFORE, judgment is rendered:

1. Declaring the real estate mortgage made by Corazon Pajarillaga-Dadis, through her daughter Marissa, in favor of defendant Magtanggol de Guzman, without the consent of the plaintiff, void;

2. Ordering the Register of Deeds of Nueva Ecija, Talavera Branch, to [cancel] Transfer Certificate of Title No. 26572, and to reinstate Transfer Certificate of Title No. 133167 in the name of [Spouses] Delfin Domingo Dadis and Corazon Pajarillaga-Dadis;

3. Ordering the plaintiff to pay to the defendant-spouses Magtanggol de Guzman and Nora Q. de Guzman the sum of ₱210,000.00 with interest at 6% per annum from finality of judgment until full payment.

No pronouncement as to damages, there being no adequate showing of bad faith on the part of defendant Magtanggol de Guzman.

SO ORDERED.[12]

Only the Spouses De Guzman filed a motion for reconsideration, which was denied.

On appeal, the CA reversed and set aside the RTC Decision and dismissed Delfin's complaint for lack of merit. It conceded that, as found by the RTC and undisputed by the parties, the SPA had been forged. As to the issue of whether Magtanggol is a mortgagee in good faith and for value, it resolved in the affirmative by citing Our ruling in *Spouses Bautista v. Silva*.[13] The appellate court noted:

Here, the purported SPA bears the signatures of both **Corazon Pajarillaga-Dadis** and the plaintiff-appellee **Delfin Domingo Dadis**, the registered owners of the property subject of the real estate mortgage. It was **duly notarized** by Atty. Edwin F. Jacoba, Notary Public of Guimba, Nueva Ecija with PTR No. 5395500 dated January 5, 1996, who testified under seal that the principals (Spouses Dadis) appeared before him and executed the subject instrument and [acknowledged] the same to be his/her own free act and deed. The instrument was duly entered in the notarial book as Doc. No. 250, Page No. 43, Book No. XVI, Series of 1996. There is thus no apparent flaw on the face of the instrument that would cast doubt on its due execution and authenticity.[14]

The motion for reconsideration filed by Delfin was denied; hence, this petition.

We grant.

---

[12] *Id*. at 109; CA *rollo*, p. 44.

[13] 533 Phil. 627 (2006).

[14] *Rollo*, p. 78. (Emphasis in the original)

The RTC and the CA agreed that the subject SPA had been forged. Such fact is not even contested before Us by the parties. Thus, the only remaining issue to be threshed out is whether Magtanggol is a mortgagee in good faith. Both the RTC and the CA held that he acted in good faith when he entered into the loan transaction secured by a mortgage. A difference lies, however, since while the RTC declared the mortgage void the CA opined that it is valid and binding upon Delfin.

As a rule, the issue of whether a mortgagee is in good faith cannot be entertained in a Rule 45 petition because the ascertainment of good faith or the lack thereof and the determination of negligence are factual issues which lie outside the scope of a petition for review on *certiorari*.[15] This Court is not a trier of facts and is not into re-examination and re-evaluation of testimonial and documentary evidence on record.[16] An exception, which the present case falls under, is when there is a misapprehension of facts or when the inference drawn from the facts is manifestly mistaken.[17]

We hold that Magtanggol is not a mortgagee in good faith.

The doctrine of mortgagee in good faith has been allowed in many instances but in situations dissimilar from the case at bench. *Cavite Development Bank v. Spouses Lim*[18] explained the doctrine in this wise:

> There is, however, a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of "the mortgagee in good faith" based on the rule that all persons dealing with the property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond

---

[15] See *Claudio v. Saraza,* G.R. No. 213286, August 26, 2015, 768 SCRA 356, 364 and *Arguelles, et al. v. Malarayat Rural Bank, Inc.,* 730 Phil. 226, 234 (2014).

[16] See *Ereña v. Querrer-Kauffman,* 525 Phil. 381, 397 (2006).

[17] *Claudio v. Saraza, supra* note 15, at 364-365.

[18] 381 Phil. 355 (2000).

what appears on the face of the title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.[19]

The doctrine of mortgagee in good faith presupposes that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his or her name and that, after obtaining the said title, he or she succeeds in mortgaging the property to another who relies on what appears on the said title.[20] In this case, Marissa is undoubtedly not the registered owner of the subject lot; and the certificate of title was in the name of her parents at the time of the mortgage transaction. She merely acted as the attorney-in-fact of Corazon and Delfin by virtue of the falsified SPA. The protection accorded by law to mortgagees in good faith cannot be extended to mortgagees of properties that are not yet registered with the RD or registered but not under the mortgagor's name.[21]

When the mortgagee does not directly deal with the registered owner of the real property, like an attorney-in-fact of the owner, it is incumbent upon the mortgagee to exercise greater care and a higher degree of prudence in dealing with such mortgagor.[22] As *Abad v. Sps. Guimba*[23] reminded:

---

[19] *Cavite Development Bank v. Sps. Lim, supra,* at 368. See also *Claudio v. Saraza, supra* note 15, at 365; *Arguelles, et al. v. Malarayat Rural Bank, Inc., supra* note 15, at 235; *Sps. Vilbar v. Opinion,* 724 Phil. 327, 348-349 (2014); *Bank of Commerce v. Spouses San Pablo, Jr.,* 550 Phil. 805, 821 (2007); and *Ereña v. Querrer-Kauffman, supra* note 16, at 402.

[20] *Claudio v. Saraza, supra* note 15, at 365-366; *Bank of Commerce v. Spouses San Pablo, Jr., supra*; and *Ereña v. Querrer-Kauffman, supra* note 16, at 402.

[21] See *Heirs of Gregorio Lopez v. Development Bank of the Philippines,* G.R. No. 193551, November 19, 2014, 741 SCRA 153, 170.

[22] See *Arguelles, et al. v. Malarayat Rural Bank, Inc., supra* note 15, at 235-236, citing *Bank of Commerce v. Spouses San Pablo, Jr., supra* note 19.

[23] 503 Phil. 321 (2005).

x x x A person who deals with registered land through someone who is *not* the registered owner is expected to look behind the certificate of title and examine *all* factual circumstances, in order to determine if the mortgagor/vendee has the capacity to transfer any interest in the land. One has the duty to ascertain the identity of the person with whom one is dealing, as well as the latter's legal authority to convey.

The law "requires a higher degree of prudence from one who buys from a person who is not the registered owner, although the land object of the transaction is registered. While one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is *not* the registered owner is expected to examine not only the certificate of title but *all* factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land." Although the instant case does not involve a sale but only a mortgage, the same rule applies inasmuch as the law itself includes a mortgagee in the term "purchaser."[24]

Here, Magtanggol maintained that he did not bother to inquire from Corazon and Marissa the whereabouts of Delfin because, at the time the mortgage transaction was held, the SPA presented was well-prepared, duly signed, and notarized and that it was them who actually handed it together with their companions, Imelda Reyes and Roger Sumawang, and that Corazon did not tell him the whereabouts of her husband, who, unknown to him, was in the USA at the time.[25]

Under Section 23, [26] Rule 132 of the Rules, not all types of public documents are deemed *prima facie* evidence of the facts

---

[24] *Abad v. Sps. Guimba, supra,* at 331-332. See also *Arguelles, et al. v. Malarayat Rural Bank, Inc., supra* note 15, at 236; *Mercado v. Allied Banking Corporation,* 555 Phil. 411, 427 (2007); and *Bank of Commerce v. Spouses San Pablo, Jr., supra* note 19.

[25] TSN, January 24, 2005, p. 4; TSN, February 15, 2005, pp. 3-5.

[26] SEC. 23. *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public

therein stated. Although classified as a public document,[27] a notarized document is merely evidence of the fact which gave rise to their execution and of the date of the latter.[28] When the notarization is defective, the public character of the document is stripped off and it is reduced to a mere private document that should be examined under the parameters of Section 20, Rule 132 of the Rules, providing that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either *(a)* [b]y anyone who saw the document executed or written, or *(b)* [b]y evidence of the genuineness of the signature or handwriting of the maker."[29]

We rule that the evidentiary weight conferred upon the subject SPA with respect to its due execution and the presumption of

---

officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[27] Sec. 19, Rule 132 of the *Rules* provides:

SEC. 19. *Classes of Documents*. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to the entered therein.

All other writings are private.

Section 30 of Rule 132 of the *Rules* also states:

SEC. 30. *Proof of notarial documents*. – Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved.

[28] See *Republic v. Gimenez,* G.R. No. 174673, January 11, 2016, 778 SCRA 261, 310-311.

[29] See *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap,* 740 Phil. 35, 49 (2014).

regularity in its favor was rebutted by clear and convincing evidence.[30] Both testimonial and documentary evidence presented by Delfin effectively overcame and negated the legal presumptions. In the witness stand, he categorically denied that he signed the SPA and that he executed such document before a notary public. His assertion was confirmed by the entries in his passport, which indicated that he left the Philippines on November 24, 1995 and returned only on November 13, 1999.[31] Moreover, Martina, a tenant on the subject property, testified that Delfin could not have given authority to Marissa because he was then residing in the USA and just went home in November 1999 when Corazon died.[32] Records do not show that the SPA was pre-signed by Delfin in the USA or that it was actually signed by him in the presence of the alleged witnesses and/or the notary public. It was not proven that he appeared personally before the notary public to acknowledge that the SPA was his own free and voluntary act and deed. Considering that the notarization of the SPA is irregular, no probative value can be given thereto.[33] The burden of evidence shifts upon the Spouses De Guzman to prove the genuineness of Delfin's signature and the due execution of the SPA.[34] They utterly failed. Only Magtanggol testified for the defense. He did not present Marissa, the witnesses to the execution of the SPA, the notary public, or even a handwriting expert in order to corroborate his self-serving representations.

Bautista v. Silva[35] is relevant to the present controversy, but not in the way the CA had applied it. In resolving the question of as to what extent an inquiry into a notarized SPA should go

---

[30] See *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap, supra,* at 48.

[31] TSN, November 22, 2004, p. 5.

[32] TSN, November 4, 2004, pp. 5-6.

[33] *China Banking Corp. v. Lagon,* 527 Phil. 143, 152 (2006).

[34] See *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap, supra* note 29, at 50.

[35] *Supra* note 13.

in order for one to qualify as a buyer for value in good faith, this Court opined in said case:

x x x [No] automatic correlation exists between the state of forgery of a document and the bad faith of the buyer who relies on it. A test has to be done whether the buyer had a choice between knowing the forgery and finding it out, or he had no such choice at all.

When the document under scrutiny is a special power of attorney that is ***duly notarized***, we know it to be a public document where the notarial acknowledgment is *prima facie* evidence of the fact of its due execution. A buyer presented with such a document would have no choice between knowing and finding out whether a forger lurks beneath the signature on it. The notarial acknowledgment has removed that choice from him and replaced it with a presumption sanctioned by law that the affiant appeared before the notary public and acknowledged that he executed the document, understood its import and signed it. In reality, he is deprived of such choice not because he is incapable of knowing and finding out but because, under our notarial system, he has been given the luxury of merely relying on the presumption of regularity of a duly notarized SPA. And he cannot be faulted for that because it is precisely that fiction of regularity which holds together commercial transactions across borders and time.

In sum, ***all things being equal***, a person dealing with a seller who has possession and title to the property but whose capacity to sell is restricted, qualifies as a buyer in good faith if he proves that he inquired into the title of the seller as well as into the latters capacity to sell; and that in his inquiry, he relied on the notarial acknowledgment found in the sellers ***duly notarized*** special power of attorney. He need not prove anything more for it is already the function of the notarial acknowledgment to establish the appearance of the parties to the document, its due execution and authenticity.

Note that we expressly made the foregoing rule applicable only under the operative words "duly notarized" and "all things being equal." Thus, said rule should not apply when there is an apparent flaw afflicting the notarial acknowledgment of the special power of attorney as would cast doubt on the due execution and authenticity of the document; or when the buyer has actual notice of circumstances outside the document that would render suspect its genuineness.[36]

---

[36] *Bautista v. Silva, supra,* at 642-643. (Citations omitted).

Similar to a buyer, the status of a mortgagee in good faith is never presumed but must be proven by the person invoking it.[37] Good faith connotes an honest intention to abstain from taking unconscientious advantage of another.[38] "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 acts by which alone the inward motive may, with safety, be determined."[39]

We rule that, based on his own disclosures during the trial, Magtanggol could not be considered as a mortgagee in good faith because he had actual notice of facts that should have put him on deeper inquiry into Marissa's capacity to sell. He could not feign ignorance of Delfin's absence or whereabouts. The subject SPA was not yet existing at the time he first met Corazon and Marissa. It was him who required it from them. He testified that sometime in 1996, Corazon, together with her three daughters, went to their house to talk to him regarding the subject property that was mortgaged in favor of Greenline Lending Corporation, a financial institution based in Cabanatuan. Because he allegedly pitied Corazon, who was sickly at the time and in order to help in her medication, he agreed to their offer to mortgage the same property to him after he redeemed it from Greenline.[40] It was he who informed Corazon that she could not mortgage by herself alone and advised her to prepare an SPA to be used in their transaction.[41] With these admissions, it is but logical to infer that the only reason why he required the execution of the subject SPA was that he already knew, as a matter of fact, after inquiring into or being told of, the absence or whereabouts of Delfin. Despite this actual knowledge at the time the mortgage transaction was entered into, he did not

---

[37] See *Spouses Aggabao v. Parulan, Jr., et al.,* 644 Phil. 26, 38 (2010).

[38] *Claudio v. Saraza, supra* note 15, at 369.

[39] *Land Bank of the Philippines v. Poblete,* 704 Phil. 610, 622 (2013).

[40] TSN, January 24, 2005, pp. 3-4; TSN, February 15, 2005, p. 2.

[41] *Id*. at 3; *id*. at 3.

question the due execution of the SPA and the resulting authority conferred upon Marissa; therefore, he is not a mortgagee in good faith.[42]

Assuming that there is truth to Magtanggol's claim that he did not know if Delfin signed the SPA and did not bother to ask whether he was the one who signed it because it was already well prepared, duly signed, and notarized, such omission clearly constitutes neglect in making the necessary inquiries. Notably, the REM was entered into on December 11, 1996, or merely a day after the SPA was purportedly executed on December 10, 1996. Where the mortgagee acted in haste in granting the mortgage loan and did not ascertain the authority of the supposed agent executing the mortgage, he cannot be considered an innocent mortgagee.[43] Moreover, considering the substantial loan amount of ₱210,000.00, Magtanggol should have undertaken steps to check Corazon's (and consequently, Marissa's) capacity to transfer any interest in the mortgaged land. Instead, he deliberately chose to close his eyes on a fact which should put a reasonable man on guard. Magtanggol was not a mortgagee in good faith not because he neglected to ascertain the authenticity of the title but because he did not check if the person he was dealing with had proper authority to mortgage the property.[44] He clearly failed to observe the required degree of caution in ascertaining the genuineness of the SPA and the supposed authority of Marissa. He should not have simply relied on the face of the document submitted by Corazon and Marissa. When the person applying for the loan is other than the registered owner of the real property being mortgaged, it should have already raised a red flag and should have induced the mortgagee to make inquiries into and confirm the authority of the

---

[42] See *Bautista v. Silva, supra* note 35, at 642-643 and *China Banking Corp. v. Lagon, supra* note 33.

[43] See *Arguelles, et al. v. Malarayat Rural Bank, Inc., supra* note 15, at 239.

[44] See *Abad v. Sps. Guimba, supra* note 23, at 332.

mortgagor.[45] A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent mortgagee for value.[46] The ruling in *Spouses Aggabao v. Parulan, Jr., et al.,*[47] although pertaining to a sales transaction, may be applied with equal force:

> Yet, it ought to be plain enough to the petitioners that the issue was whether or not they had diligently inquired into the authority of Ma. Elena to convey the property, not whether or not the TCT had been valid and authentic, as to which there was no doubt. Thus, we cannot side with them.
>
> Firstly, the petitioners knew fully well that the law demanded the written consent of Dionisio to the sale, but yet they did not present evidence to show that they had made inquiries into the circumstances behind the execution of the SPA purportedly executed by Dionisio in favor of Ma. Elena. Had they made the appropriate inquiries, and not simply accepted the SPA for what it represented on its face, they would have uncovered soon enough that the respondents had been estranged from each other and were under *de facto* separation, and that they probably held conflicting interests that would negate the existence of an agency between them. To lift this doubt, they must, of necessity, further inquire into the SPA of Ma. Elena. The omission to inquire indicated their not being buyers in good faith, for, as fittingly observed in *Domingo v. Reed:*
>
>> What was required of them by the appellate court, which we affirm, was merely to investigate – as any prudent vendee should – the authority of Lolita to sell the property and to bind the partnership. They had knowledge of facts that should have led them to inquire and to investigate, in order to acquaint

---

[45] *Bank of Commerce v. Spouses San Pablo, Jr., supra* note 19, at 823, as cited in *Land Bank of the Philippines v. Poblete,* 704 Phil. 610, 623 (2013) and *Arguelles, et al. v. Malarayat Rural Bank, Inc., supra* note 15, at 236.

[46] *Claudio v. Saraza, supra* note 15, at 367; *Arguelles, et al. v. Malarayat Rural Bank, Inc., supra* note 15, at 236; *Land Bank of the Philippines v. Poblete, supra* note 45; and *Bank of Commerce v. Spouses San Pablo, Jr., supra* note 19, at 823.

[47] *Supra* note 37.

themselves with possible defects in her title. The law requires them to act with the diligence of a prudent person; in this case, their only prudent course of action was to investigate whether respondent had indeed given his consent to the sale and authorized his wife to sell the property.

Indeed, an unquestioning reliance by the petitioners on Ma. Elena's SPA without first taking precautions to verify its authenticity was not a prudent buyer's move. They should have done everything within their means and power to ascertain whether the SPA had been genuine and authentic. If they did not investigate on the relations of the respondents *vis-a-vis* each other, they could have done other things towards the same end, like attempting to locate the notary public who had notarized the SPA, or checked with the RTC in Manila to confirm the authority of Notary Public Atty. Datingaling. x x x.[48]

The falsity of the SPA could not be cured even if Magtanggol later on informed Delfin of the mortgage transaction and of the proceedings leading to the property's foreclosure, consolidation of title, and issuance of a new title. The sale (or encumbrance) of conjugal property without the consent of the husband was not merely voidable but void; hence, it could not be ratified.[49] A void contract is equivalent to nothing and is absolutely wanting in civil effects; it cannot be validated either by ratification or prescription.[50] Similar to other cases, *Spouses Ravina v. Villa Abrille, et al.*[51] already settled:

Significantly, a sale or encumbrance of conjugal property concluded after the effectivity of the Family Code on August 3, 1988, is governed by Article 124 of the same Code that now treats such a disposition to be void if done (a) without the consent of both the husband and the wife, or (b) in case of one spouses inability, the authority of the court. Article 124 of the Family Code, the governing law at the time the assailed sale was contracted, is explicit:

---

[48] *Spouses Aggabao v. Parulan, Jr., et al., supra*, at 40-41. (Citations omitted).

[49] *Id.* at 29.

[50] *Fuentes, et al. v. Roca, et al.,* 633 Phil. 9, 20 (2010).

[51] 619 Phil. 115 (2009).

ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. **In the absence of such authority or consent, the disposition or encumbrance shall be void**. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (Emphasis supplied.)

The particular provision in the New Civil Code giving the wife ten (10) years to annul the alienation or encumbrance was not carried over to the Family Code. It is thus clear that alienation or encumbrance of the conjugal partnership property by the husband [or wife] without the consent of the wife [or husband] is null and void.

Hence, just like the rule in absolute community of property, if the husband [or wife], without knowledge and consent of the wife [or husband], sells conjugal property, such sale is void. If the sale was with the knowledge but without the approval of the wife [or husband], thereby resulting in a disagreement, such sale is annullable at the instance of the wife [or husband] who is given five (5) years from the date the contract implementing the decision of the husband [or wife] to institute the case.[52]

As the forged SPA and REM are void *ab initio*, the foreclosure proceedings conducted on the strength thereof suffer from the same infirmity. Being not a mortgagee in good faith and an innocent purchaser for value at the auction sale, Magtanggol is not entitled to the protection of any right with respect to the

---

[52] *Spouses Ravina v. Villa Abrille, et al., supra,* at 123-124.

subject property. Since it was not shown that the property has been transferred to a third person who is an innocent purchaser for value (because no intervention or third-party claim was interposed during the pendency of this case), it is but proper that the ownership over the contested lot should be retained by Delfin.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The July 30, 2012 Decision and February 13, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 87784 are **REVERSED AND SET ASIDE**. The November 10, 2005 Decision and January 25, 2006 Order of Regional Trial Court, Branch 33, Guimba, Nueva Ecija, are **REINSTATED AND UPHELD**.

SO ORDERED.

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

Mendoza and *Martires, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 206702. June 7, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the NATIONAL IRRIGATION ADMINISTRATION, *petitioner, vs.* **ROLANDO C. CEBUAN, RUBEN C. CEBUAN, ERIC C. CEBUAN, SAMUEL C. BARING, BEATRICE A. LOW, LEONORE L. DE LA SERNA and HEIRS OF LORENZO UMBAAD,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; STATE POWERS; EMINENT DOMAIN; JUST COMPENSATION.—** In expropriation proceedings, just compensation is defined as the full and fair equivalent of the

property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word compensation and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. The constitutional limitation of just compensation is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.

2. **ID.; ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION IN EXPROPRIATION CASES IS A JUDICIAL FUNCTION AND COURTS ARE NOT BOUND BY LEGISLATIVE ENACTMENTS AND EXECUTIVE ISSUANCES.—** [T]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts owing to the constitutional mandate that no private property shall be taken for public use without payment of just compensation. That being said, legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. As such, they are not binding on courts and are treated as mere guidelines in ascertaining the amount of just compensation. Even the enumeration of the standards for the assessment of the value of the land for purposes of expropriation under Section 5 of Republic Act No. 8974 reflects the non-exclusive, permissive and discretionary character thereof. x x x Be that as it may, unmoving still is the rule that the "just"-ness of the compensation can only be attained by using reliable and actual data. Accordingly, trial courts are reminded, time and again, to be circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds.

3. **ID.; ID.; ID.; ID.; WHERE ONLY A PART OF A CERTAIN PROPERTY IS EXPROPRIATED, CONSEQUENTIAL DAMAGE, IF ANY, TO THE REMAINING PART MAY BE RECOVERED.—** While as a general rule, just compensation, to which the owner of the property to be

expropriated is entitled, is equivalent to the market value, the rule is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property. The award of consequential damages is specifically enunciated under Section 6 of Rule 67 x x x Accordingly, if as a result of expropriation, the remaining portion of the property suffers from impairment or decrease in value, the award of consequential damages is proper. On the other hand, if the expropriation resulted in benefits to the remaining lot, such consequential benefits may be deducted from the consequential damages or from the value of the expropriated property. However, such consequential benefits refer to the actual benefits derived by the landowner which are the direct and proximate results of the improvements as a consequence of the expropriation and not to the general benefits which the landowner may receive in common with the community.

4. **ID.; ID.; ID.; ID.; INTEREST IMPOSED ON THE AMOUNTS OF JUST COMPENSATION; CASE AT BAR.—** By recent jurisprudence, it has been settled that the payment of just compensation for the expropriated property amounts to an effective forbearance on the part of the State, x x x In the instant case, the interest is to be imposed only on the balance of the final just compensation, *i.e.,* just compensation as computed by the RTC *(sans* the award for unrealized income) less the amount of the provisional compensation. Since NIA's initial valuation had been contested, and it has been subsequently determined that the expropriated properties had been undervalued, an interest on the balance or the difference between the amount already paid and the just compensation as determined by the RTC, is proper. While the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance, nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP-MB) No. 799, Series of 2013, effective July 1, 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) *per annum (p.a.),* in the absence of an express contract as to such rate of interest. Accordingly, the interest rate of 12% p.a. should be imposed on the balance due from the date of the taking, or on May 7, 2003 until June 30, 2013 and the interest rate of 6% p.a. is imposed from July 1, 2013 until fully paid.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** [T]he RTC's assessment of the value of the land was affirmed by the appellate court on review. Accordingly, the trial court and the CA's identical findings concerning the assessment of the value of the properties should be accorded the greatest respect, and are binding on the Court, absent proof that they committed error in establishing the facts and in drawing conclusions therefrom. There being no showing that the trial court and the CA committed any error, We, thus, accord due respect to their findings. Besides, the Court is not a trier of facts and the rule that petitions brought under Rule 45 may only raise questions of law equally applies to expropriation cases.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for respondents.
Joseph E. Tomaneng for respondents Low and Dela Serna.
Patrick R. Battad for respondents Cebuan and Baring.

D E C I S I O N

TIJAM, *J.*:

Challenged *via* this Petition for Review[1] under Rule 45 are the Decision[2] dated July 13, 2012 and Resolution[3] dated February 6, 2013 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 02263 which affirmed the ruling of the RTC[5] adopting the Board

---

[1] *Rollo,* pp. 10-39.

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

[3] *Id*. at 60-61.

[4] Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Maria Elisa Sempio Diy and Jhosep Y. Lopez.

[5] *Partial Judgment* and *Clarificatory and Final Judgment* penned by Judge Augustus L. Calo, Regional Trial Court of Agusan Del Norte and Butuan City, 10th Judicial Region, Branch 5 in Butuan City.

of Commissioners' recommendation on the computation of just compensation but deleted the additional award for unrealized income. However, on the observation that herein respondents have not been fully paid for the improvements on their respective properties, the CA remanded the case to the RTC for the final determination of just compensation.

The Antecedent Facts

For its Lower Agusan Development Project — Irrigation Component at Barangays Basag, Ampayon and Kinamlutan, all situated in Butuan City, the National Irrigation Administration (NIA) identified several parcels of land as suitable locations for the construction of irrigation canals. Portions of the parcels of land identified were those located in (1) Barangay Basag owned by respondents Rolando Cebuan (652 sq.m.); Ruben Cebuan (503 sq. m.); Eric Cebuan (1,244 sq. m. and 1,754 sq. m.); and Samuel Baring (776 sq. m. and 836 sq. m.); (2) Barangay Ampayon owned by respondent Beatrice Low (2,412 sq. m. and 1,550 sq. m.); and, (3) Barangay Kinamlutan owned by respondents Leonore Dela Serna (1,440 sq. m.) and the Heirs of Lorenzo Umbaad (590 sq. m.)

NIA initiated expropriation proceedings after the failure of the negotiated sale.[6] In its Complaint[7], NIA based the values of the properties on BIR Zonal Valuations as specified in Department Order No. 16-2000[8] and arrived at an aggregate amount of PhP60,094.50 for the entire 11,737 sq. m. sought to be expropriated. In their Answer,[9] respondents Cebuans, Baring and the heirs of Umbaad expressed their agreement to the expropriation provided that the properties be valued at least PhP300 per square meter. Likewise, respondents Dela Serna and Low agreed to the expropriation but valued at PhP300 per square meter.[10]

---

[6] *Rollo,* pp. 62-73.

[7] Dated December 3, 2003 and filed on December 9, 2003; *Id.* at 62-73.

[8] Dated August 21, 1998; *Id.* at 104-107.

[9] *Id.* at 108-111.

[10] *Id.* at 114-116.

Nevertheless, in the years 2002 and 2003, the Cebuans and Baring executed in favor of NIA a Permit to Enter[11] and corresponding payments for damages caused to the rice plants, other various plants and trees thereon were made. Likewise, the heirs of Umbaad received in 2004 payment for damages caused on their property. On the other hand, Beatrice Low and Leonore dela Serna did not receive any payment as they allegedly had no improvements on their respective properties.[12]

Thereafter, NIA moved for the issuance of a writ of possession and upon deposit of the amount equivalent to 100% of the value of the properties involved based on the current BIR zonal value and submission of the certificate of availability of funds, the RTC granted the same and a Writ of Possession[13] dated April 21, 2004 was issued.

Only the Cebuans, Baring and the heirs of Umbaad moved for the deferment of the implementation of the Writ of Possession on the ground that they had not been fully paid of the improvements on their properties as they were allegedly deprived of the use of the same since 1999 but had been paid for two croppings only.[14]

Subsequently, as proposed by NIA, and as agreed upon by the parties, a Board of Commissioners[15] was created by the RTC to determine the fair market value of the properties sought to be expropriated.

On May 16, 2006, the Commissioners submitted their Report[16] assigning the fair market value of the properties of the Cebuans,

---

[11] Rolando executed a *Permit to Enter* on February 21, 2002 while Ruben, Eric and Samuel executed their respective *Permits to Enter* on May 7, 2003.

[12] *Rollo,* p. 120.

[13] *Id*. at 112-113.

[14] *Id*. at 117-118.

[15] Composed of Angelito Carbonilla of Land Bank of the Philippines and Augusto Torralba of RTC (Branch 3) as members, and Atty. Glocelito Jayma of RTC (Branch 4) as Chairperson.

[16] *Rollo,* pp. 179-191.

Baring and the heirs of Umbaad at PhP45 per square meter and the property of Leonore dela Serna at PhP120 per square meter, while the consequential damages were assessed at 5% of the fair market value of the remaining portion of the properties and the consequential benefits were assessed at 3% thereof.

NIA filed its Comment[17] on the Report, arguing that the fair market value as fixed by the Commissioners was grossly excessive. Instead, NIA contended that the value of the properties should only be PhP0.90 per square meter which was the price of the properties when the same were bought by the respondents from the government.[18]

The Ruling of the RTC

On December 18, 2006, the RTC rendered its Partial Judgment[19] adopting the Commissioners' Report and disregarding NIA's contention that the price should be at PhP0.90 per square meter for being unrealistic. The RTC further noted that a parcel of land similar to the properties in question was bought by NIA at PhP160 per square meter, which allegation had not been refuted by NIA.

The RTC thus disposed:

WHEREFORE, foregoing premises considered, the National Irrigation Administration (NIA) is directed to pay to[:]

1. For the lands affected
(a) Ruben C. Cebuan = P27,529.2
(b) Eric C. Cebuan = 158,219.
(c) Samuel C. Baring = 93,988.80

2. For unrealized income (ricefield) based on a document approved by Gregorio y Pang, Jr., Project Manager, found on page 166, Record.

(a) Ruben – 5,940 square meters
- 503 square meters taken by NIA
5,437 square meters = 51 cavans

---

[17] *Id*. at 193-196.

[18] *Id*. at 194.

[19] *Id*. at 198-202.

= 2,550 kilos x 7.50
= ₱19,125.00 – 16% (Harvester's and Thresher's Share)
= ₱16,065 x 3 croppings (2003-2006)
= ₱48,195.00

(b) Eric – 29,877 square meters
- 2,978 square meters (NIA)
26,899 square meters = 229.5 cavans
= 11,475 kilos x 7.50
= ₱86,062.50 – 16% (Harvester's and Thresher's Share)
= ₱72,292.5 x 3 croppings (2003-2006)
= ₱216,877.50

(c) Samuel – 25,444 square meters
- 1,612 square meters (NIA)
23,832 square meters = 204 cavans
= 10,200 kilos x 7.50
= ₱76,500.00 – 16% (Harvester's and Thresher's Share)
= ₱64,260 x 3 croppings (2003-2006)
= ₱192,780.00

The amounts paid to them should be deducted from the above.

The foregoing excludes the incremental interest computed per annum in accordance with existing jurisprudence which is 6% to be counted from May 2003 when NIA was given the Permit To Enter by the Cebuans and Samuel C. Baring up to the time when the amounts adjudged will be fully paid.

Rolando Cebuan is excluded in this partial judgment as he submitted a Manifestation, No. 3 of which states[:]

> "3. Moreover, the Plaintiff, National Irrigation Administration, has already prepared and processed all documents to effect payment thereof. Thus, defendant Rolando C. Cebuan hereby waives any action or suit, criminal, civil or any other kind, against the National Irrigation Administration x x x." (Record, pp. 198-199)

The lands of Leonore [dela] Serna and that of the Heirs of Lorenzo Umbaad though included in the Commissioners' Report cannot yet be acted upon as the Court has no way of knowing its classification, i.e., idle land or cultivated and devoted to what kind of crop/plants.

Beatrice Low's land cannot as well be acted upon for lack of basis as it was not included in the Commissioners' Report, hence, the Board of Commissioners' [sic] is directed to do what is incumbent upon them [to] finish their job.

SO ORDERED.[20]

Upon Motion for Clarificatory Judgment[21] filed by the heirs of Umbaad, the RTC rendered its Clarificatory and Final Judgment[22] additionally directing the NIA to pay Leonore dela Cerna, the heirs of Umbaad and Beatrice Low just compensation and unrealized income as follows:

The National Irrigation Administration (NIA) is directed to pay:

I.) For lands affected: Just Compensation (JC=FMV+CD-CB; where FMV means Fair Market Value, CD means Consequential Damages, and CB means Consequential Benefits.)

a.) **LEONORE DELA CERNA**
Area: 17,301 sq.m. (uncultivated)
- 1,440 sq.m. – area taken by NIA at Php 120.00/ sq. meter(per Commissioners' Report, Records, p. 214)
____
15,861 sq. m. – total remaining area
JC = Php172,800 + Php95,166 – Php57,996
JC = Php209,970 (Records, p. 219)

b.) HEIRS OF LORENZO UMBAAD
Area: 37,665 sq. m.
- 590 sq. m. – area taken by NIA at Php 45.00/sq.m. (Commissioners' Report, p[.] 214)
____
37,075 sq. m. – or 3.7075 has. – total remaining area

[20] *Id*. at 200-202.

[21] As cited in the *Clarificatory and Final Judgment* of the RTC.

[22] *Id*. at 203-206.

JC = Php26,550 + Php50,051.25 – Php33,367.75
JC = php43,234.25 (Records, p. 219)

c.) **BEATRICE LOW** (The Fair Market Value is computed at Php120.00/ sq.m. based on Commissioners' computation of Leonore dela Cerna's property considering that both properties are similarly situated, being both located at Ampayon, Butuan City; Records, 214)

Area: Lot 12 - 13,939 sq. m.
- 2,412 sq. m. –area taken by NIA at Php 120.00/sq.m.

____

11,527 sq. m. –total remaining area

Lot 17 - 17,302 sq. m.
- 1,550 sq. m.–area taken by NIA at Php 120.00/sq. m.

____

15,752 sq. m. –remaining area

Total area taken: 3,962 sq. m.
Total remaining area: 27,279 sq. m. or 2.7279 has.

JC = Php475,440 + Php163,674 – Php98,204
JC = Php540,910

II.) For unrealized income

a.) **Heirs of Lorenzo Umbaad**
Lot area: 37,665 sq.m.
Area taken: 590 sq.m.
Remaining Area: 37,075 sq.m. or 3.7075 has.
Approximate Income per hectare: 85 cavans/ha. at 50 kilos per cavan at Php 7.50 per kilo (based on a document approved by Gregorio Y. Pang, NIA's Project Manager; Records, p. 166)

Unrealized Income = 3.7075 has. x 85 cavans/ha
= 315.1375 cavans x 50 kls./cavan
= 15,756.875 kls. x Php7.50/kilo
= Php118,176.56 x 6 years (2003-2009 at 1 cropping/year)
= Php709,059.38 – 16% or Php113,449.50 (harvester['s] and treshe's [sic] shares)
= **Php595,609.88**

b.) BEATRICE LOW:
Total Area: 31,241 sq.m.
Total area taken: 3,962 sq. m.
Total remaining area: 27,279 sq.m. or 2.7279 has.

Unrealized Income = 2.7279 has. x 85 cavans/ha.
= 231.8715 cavans x 50 kls./cavan
= 11,593.58 kls. x Php 7.50/kl.
= Php521,711.1 – 16% or Php83,473.776
(harvester[‘s] and tresher’s [sic] share)
= Php438,273.32

c.) LEONORE DELA CERNA
NO UNREALIZED INCOME (Area is agricultural but **uncultivated** per Commissioners’ Report, Records, p. 210)

SO ORDERED.[23]

From the foregoing pronouncements NIA interposed its appeal[24] to the CA on the grounds that: (1) the market values assigned to the properties were contrary to the established zonal valuations; (b) the determination of consequential damages and benefits are speculative; and, (c) the award for unrealized income lacked basis.

NIA argued that the RTC should have instead used the tax declarations and BIR zonal valuations to determine the fair market value of the subject properties. NIA further argued that the consequential benefits should, at best, be equal to the consequential damages, resulting in the two canceling each other, considering the tremendous increase in the value of the remaining areas of respondents’ properties caused by the construction of the canals.[25]

The Ruling of the CA

The CA partially granted NIA’s appeal. The CA held that the assessed values recommended by the Commissioners were not exorbitant based as it were on (1) varied appraisals from different appraisers; (2) description and identification of the properties based on ocular inspection; (3) location and/or distance of the properties from the national road; (4) variety of crops planted thereon; and (5) similarly situated adjacent lands. The

[23] *Id*. at 204-206.

[24] *Brief for the Plaintiff-Appellant; id*. at 238-269.

[25] *Id*. at 254-255 and at 261-263.

CA further held that while the BIR zonal valuation may be a basis, it is not the sole index of the value of real properties within the locality.[26]

However, the CA found the award for unrealized income improper considering that the determination of just compensation is as of the time of taking.[27]

Finally, the CA observed that some of the respondents were not paid for the improvements on their properties. As such, the CA remanded the case to the RTC for the reception of additional evidence pertaining thereto and thereafter, to compute payment thereof.

In disposal, the CA pronounced:

> **WHEREFORE,** the appeal is partly GRANTED. The case is thus REMANDED to the court *a quo* for further proceedings for the final determination of just compensation. The court *a quo* is DIRECTED to resolve this issue with reasonable dispatch.
>
> **SO ORDERED.**[28]

NIA's motion for reconsideration was similarly rebuffed by the CA. Hence, resorted to the present petition.

The Issues

The issues posed by NIA for resolution are : 1.) whether the CA erred in affirming the RTC's ruling on just compensation; and 2.) whether there is justification for the CA's remand of the case to the RTC.

The Ruling of this Court

NIA reiterates its arguments that the value of the properties should be as that reflected in the tax declarations and in the BIR zonal valuations and that the assessment of the consequential damages and benefits lacked basis. Additionally, NIA argue

---

[26] *Id*. at 55-56.

[27] *Id*. at 57.

[28] *Id*. at 58.

that the remand of the case to the RTC is unnecessary as full payment for the damages caused to the improvements on the properties can be ascertained from the records.

The petition is partly meritorious.

No error in the Assessment of Value of Land

In expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word compensation and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[29]

The constitutional limitation of just compensation is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[30]

Further, the determination of just compensation in expropriation cases is a function addressed to the discretion of the courts owing to the constitutional mandate that no private property shall be taken for public use without payment of just compensation.[31] That being said, legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. As such, they are not binding on courts and are treated as mere guidelines in

---

[29] *Republic v. Asia Pacific Integrated Steel Corporation,* G.R. No. 192100, March 12, 2014, 719 SCRA 50.

[30] *Republic v. Rural Bank of Kabacan, Inc., et al.,* G.R. No. 185124, January 25, 2012.

[31] *National Power Corporation v. Tuazon,* 668 Phil. 301 (2011).

ascertaining the amount of just compensation.[32] Even the enumeration of the standards for the assessment of the value of the land for purposes of expropriation under Section 5 of Republic Act No. 8974[33] reflects the non-exclusive, permissive and discretionary character thereof.[34] The insistence then of NIA to fix the amount of just compensation based on the zonal valuation of the land and on the tax declaration is utterly misplaced as these factors are only two of the several which the court may consider to facilitate the determination of just compensation.

---

[32] *National Power Corporation v. Spouses Zabala,* G.R. No. 173520, January 30, 2013, 689 SCRA 554, 555-556.

[33] Section 5 of Republic Act No. 8974 otherwise known as An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and Other Purposes, enumerates the standards that assist in the determination of just compensation, as follows:

> SEC. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.* In order to facilitate the determination of just compensation, the court **may consider, among other well-established factors, the following relevant standards:**
>
> (a) The classification and use for which the property is suited;
>
> (b) The developmental costs for improving the land;
>
> (c) The value declared by the owners;
>
> (d) The current selling price of similar lands in the vicinity;
>
> (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;
>
> (f) The size, shape or location, **tax declaration** and **zonal valuation** of the land;
>
> (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
>
> (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible. (emphasis supplied)

[34] *Republic of the Philippines, represented by the Toll Regulatory Board v. C.C. Unson, Company, Inc.,* G.R. No. 215107, February 24, 2016, citing *Republic v. Spouses Bautista,* G.R. No. 181218, January 28, 2013, 689 SCRA 349.

Be that as it may, unmoving still is the rule that the "just"-ness of the compensation can only be attained by using reliable and actual data. Accordingly, trial courts are reminded, time and again, to be circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds.[35]

Here, in valuing the land for purposes of fixing just compensation, the RTC took into consideration the Commissioners' Report. The Commissioners, in turn, utilized the Market Data Approach wherein the sales, listings or appraisals–adjusted as to the time of sale, location and general characteristics of comparable lots in the area, where the subject properties were located–were used. Information was gathered from the appraisals of existing banking institutions, as well as on site inspections.[36] The fair market value of the properties were, thus, determined based on reliable and actual data.

As such, the Court sees no error when the trial court accepted the Commissioner's Report and rendered judgment in accordance therewith as the same is sanctioned under Section 8,[37] Rule 67.

Further militating against the NIA's position is the fact that the RTC's assessment of the value of the land was affirmed by the appellate court on review. Accordingly, the trial court and the CA's identical findings concerning the assessment of the value of the properties should be accorded the greatest respect,

---

[35] *National Power Corporation v. Spouses Zabala, supra* note 32, at 63.

[36] *Rollo,* pp. 184-185.

[37] Sec. 8. Action upon commissioners' report. – Upon expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith; or, for cause shown, it may re-commit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

and are binding on the Court, absent proof that they committed error in establishing the facts and in drawing conclusions therefrom. There being no showing that the trial court and the CA committed any error, We, thus, accord due respect to their findings. Besides, the Court is not a trier of facts and the rule that petitions brought under Rule 45 may only raise questions of law equally applies to expropriation cases.[38]

Award for Consequential Damages Proper

NIA further questions the valuation of the consequential damages and consequential benefits on account of arbitrariness. NIA theorizes that the consequential damages and consequential benefits should be deemed equal to each other so as to offset the value of one against the other.

While as a general rule, just compensation, to which the owner of the property to be expropriated is entitled, is equivalent to the market value,[39] the rule is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property.

The award of consequential damages is specifically enunciated under Section 6 of Rule 67 as follows:

> Section 6. Proceedings by commissioners. — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties

---

[38] *Republic v. Spouses Bautista,* G.R. No. 181218, January 28, 2013, 689 SCRA 349.

[39] Market value is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. *Republic of the Philippines v. C.C. Unson, supra* note 34.

consent to the contrary, after due notice to the parties, to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.** (Emphasis supplied)

Accordingly, if as a result of expropriation, the remaining portion of the property suffers from impairment or decrease in value, the award of consequential damages is proper.[40] On the other hand, if the expropriation resulted in benefits to the remaining lot, such consequential benefits may be deducted from the consequential damages or from the value of the expropriated property.[41] However, such consequential benefits refer to the actual benefits derived by the landowner which are the direct and proximate results of the improvements as a consequence of the expropriation and not to the general benefits which the landowner may receive in common with the community.[42]

In arriving at 5% of the fair market value as consequential damages, the Commissioners took into consideration the diminution of the area of the subject properties which resulted in a decrease in the quantity of the harvest, while the 3% consequential benefits was arrived at by considering the benefits brought by the irrigation canals, greater accessibility to the roads and the appreciation in the market value of the lots. We find no reason to depart from the assessment of the

---

[40] *Republic v. Court of Appeals and Reyes,* G.R. No. 160379, August 14, 2009.

[41] *Id.*

[42] Regalado, *REMEDIAL LAW COMPENDIUM*, Vol. 1, p. 746.

Commissioners, as affirmed and adopted by the expropriation court.

Remand to the Expropriation Court for Determining Alleged Underpayment on the Value of Improvements Unnecessary

The CA ordered the remand of the case to the RTC on its observation that the records are unclear as to whether the landowners had been duly paid for the improvements on the land. On the contrary, a perusal of the disbursement vouchers[43] clearly shows that payments for improvements had been made and duly received as follows:

Rolando Cebuan – ₱333,769.10[44]
Ruben Cebuan – ₱84,165.50[45]
Eric Cebuan – ₱224,207.40[46]
Samuel Baring – ₱87,597.73[47]
Heirs of Umbaad– ₱8,085.60[48]

Notably, the Cebuans, Baring and the heirs of Umbaad never contested the amount of the foregoing payments which they admit having received, without qualification, when they executed the Permit to Enter. It was only when they moved for reconsideration of the issuance of the Writ of Possession did

---

[43] Attached as Annexes E to Q to NIA's Comment to the landowners' Motion for Reconsideration of the expropriation court's issuance of a Writ of Possession; *Rollo,* pp. 127-139.

[44] Annexes E, F, G, H, and I showing that the value of the newly planted ricefield, rice plant, various plants and trees were paid.

[45] Annexes J and K showing that the value of the rice plant for two croppings and for various plants and trees were paid.

[46] Annexes L and M showing that the value of the rice plant for two croppings and for various plants and trees and one unit residential house were paid.

[47] Annexes O and P showing that the value of various plants and trees and rice plant were paid.

[48] Annex Q showing that the value of various plants and trees were paid.

the allegation on the underpayment of improvements arise.[49] However, the landowners failed to introduce evidence in relation thereto before the expropriation court apart from their bare allegations.

Even then, a perusal of the Cebuans and Baring's Sworn Statements[50] as to the alleged underpaid value of their improvements shows that what they were actually claiming was the value of the affected crops following NIA's entry into their properties. In other words, the unpaid improvements that they were claiming pertained to payment for unrealized harvests which is not allowed. R.A. 8974 requires the payment of the value of improvements on the property at the time of taking; hence, there is no basis to hold NIA liable for the payment of unrealized harvests. The measure of the value of the improvements should be at the time when the loss resulted, *i.e.,* as of the time of taking in 2003.

Notably also, the landowners' claim that they were deprived of their properties as early as 1999 is belied by the identical findings of the RTC and the CA that NIA was allowed to enter the subject properties in 2003 after due payment of the improvements thereon as of the date of taking.[51] Incidentally, such findings of fact were adopted by the Cebuans, Baring and Umbaad in their Comment[52] on the instant Petition.

Respondents Dela Serna and Low, on the other hand, did not contest NIA's representation that their respective lands were uncultivated. Neither did they refute such finding even in their Comment on the present Petition.

All these considered, We find no reason or necessity to remand the case to the RTC for further proceedings to resolve what appears to be a settled matter.

---

[49] *Rollo,* pp. 117-118.

[50] *Id.* at 149-152.

[51] *Id.* at 298.

[52] *Id.*

Modification of Amount of Interest

Nevertheless, We find it necessary to modify the imposition of 6% interest on the amounts of just compensation to be paid by NIA to respondents that the RTC reckoned from May 2003.

By recent jurisprudence,[53] it has been settled that the payment of just compensation for the expropriated property amounts to an effective forbearance on the part of the State, thus:

> In other words, the just compensation due to the landowners amounts to an effective forbearance on the part of the state – a proper subject of interest computed from the time the property was taken until the full amount of just compensation is paid – in order to eradicate the issue of the constant variability of the value of the currency over time. In the Court's own words:
>
>> The Bulacan trial court, in its 1979 decision, was correct in imposing interest[s] on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time....[54] (Citations and emphasis omitted)

In the instant case, the interest is to be imposed only on the balance of the final just compensation, *i.e.,* just compensation as computed by the RTC *(sans* the award for unrealized income) less the amount of the provisional compensation.[55] Since NIA's initial valuation had been contested, and it has been subsequently determined that the expropriated properties had been

---

[53] *Secretary of the Department of Public Works and Highways v. Spouses Tecson,* G.R. No. 179334, April 21, 2015 (Resolution on Motion for Reconsideration).

[54] *Republic of the Philippines v. Court of Appeals,* 433 Phil. 106, 123 (2002).

[55] Provisional compensation under Sec. 4 of R.A. 8974 refers to the amount equivalent to 100% of the value of the property based on the current relevant zonal valuation by the Bureau of Internal Revenue and the value of any improvements or structure on a replacement cost method.

undervalued, an interest on the balance or the difference between the amount already paid and the just compensation as determined by the RTC, is proper.

While the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance, nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP-MB) No. 799, Series of 2013, effective July 1, 2013,[56] the prevailing rate of interest for loans or forbearance of money is six percent (6%) *per annum (p.a.),* in the absence of an express contract as to such rate of interest. Accordingly, the interest rate of 12%[57] p.a. should be imposed on the balance due from the date of the taking, or on May 7, 2003 until June 30, 2013 and the interest rate of 6% p.a. is imposed from July 1, 2013 until fully paid.

IN VIEW OF THE FOREGOING, the Court **RESOLVES** to **PARTLY GRANT** the Petition such that:

---

[56] The pertinent portion of which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

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 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 Institutions are hereby amended accordingly.

This Circular shall take effect on 01 July 2013.

[57] CB Circular No. 90527 which took effect on December 22, 1982, particularly Section 2 thereof states:

Sec. 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 per cent (12%) per annum.

The assailed Decision dated July 13, 2012 and Resolution dated February 6, 2013 of the Court of Appeals finding petitioner Republic of the Philippines, represented by the National Irrigation Authority, liable to pay just compensation in the amount computed by the Regional Trial Court *sans* the award for unrealized income are **AFFIRMED.**

However, in conformity with the existing laws, rules, and jurisprudence, the amount of legal interest is **MODIFIED** such that the interest rate of twelve percent (12%) p.a. on the balance due from May 7, 2003 until June 30, 2013 and the interest rate of six percent (6%) p.a. from July 1, 2013 until fully paid are imposed.

The order remanding the instant case to the Regional Trial Court for determination of alleged unpaid improvements on the affected properties is **DELETED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 207001. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICHARD F. TRIPOLI AND ROMULO B. IMPAS,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF

* Designated additional member as per raffle dated February 22, 2017.

***SHABU*; ELEMENTS.—** The essential elements for illegal sale of *shabu* are as follows: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.

2. **ID.; ID.; ID.; PRESENTATION OF INFORMANT AS WITNESS IS NOT INDISPENSABLE TO THE PROSECUTION OF DRUG-DEALING ACCUSED.—** Accused-appellants' argument that the failure to present the informant is fatal to the prosecution's cause fails to impress. There is no need to present the informant/poseur-buyer/police asset. *First*, the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded. *Second*, the identities of the accused-appellants were also confirmed by SPO2 Del Socorro and PO2 Olmedo.

3. **ID.; ID.; CHAIN OF CUSTODY REQUIREMENT.—** The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items such that doubts as to the identity of the evidence are eliminated. "To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence." x x x This means that on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, is the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous

drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. x x x Here, the prosecution effectively established that the chain of custody of the seized dangerous drugs from the time of seizure, marking, submission to the laboratory for testing, and presentation in court remained intact.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for appellant R. Tripoli.
George P. Bragat for appellant R. Impas.

D E C I S I O N

TIJAM, *J.*:

This is an appeal from the Decision[1] dated March 28, 2012 of the Court of Appeals (CA) in CA-G.R. CEB H.C. No. 00979, affirming the March 31, 2008 Decision[2] rendered by the Regional Trial Court (RTC) of Cebu City, Branch 10 in Criminal Case No. CBU-65243, convicting accused- appellants Richard F. Tripoli (Tripoli) and Romulo B. Impas (Impas) for illegal sale of *shabu* under Section 5, Article II, Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellants were charged in an Information dated February 10, 2003 with illegal sale of dangerous drugs, as follows:

That on or about the 27th day of January 2003, at about 1 :00 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused conniving and confederating together and mutually helping with (sic) each other, with deliberate

---

[1] Penned by Associate Justice Abraham B. Borreta, and concurred in by Associate Justices Edgardo L. delos Santos and Nina G. Antonio-Valenzuela; *Rollo*, pp. 3-23.

[2] Penned by Judge Soliver C. Peras; CA *rollo*, pp. 53-67.

intent and without being authorized by law, did then and there sell, deliver, or give away to a poseur buyer the following: two (2) heat-sealed transparent plastic packets containing white crystalline substance, having a total weight of 5.64 grams, locally known as "SHABU", containing methylamphetamine (sic) hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

Accused-appellants pleaded not guilty upon arraignment.[4] Trial on the merits ensued.

The testimony of P/Inspector David Alexander Patriana (P/Inspector Patriana) was dispensed with in view of the defense's admission of the expertise of the witness, the existence of the Chemistry Report, the subject specimen and the letter request, subject to the qualification that accused-appellants were not in possession nor were they the owners of the said specimens.[5]

The prosecution's evidence would evince that on January 26, 2003, a team of policemen from the Criminal Investigation and Intelligence Branch (CIIB), Cebu City Police Office, were briefed regarding a buy-bust operation to be conducted against Tripoli. PO2 John Pempee Arriola (PO2 Arriola) and the informant were designated as poseur-buyers and given two pieces of one hundred peso bills. The buy-bust money was placed in a package together with the "bodol" money and its serial numbers recorded in the police blotter.[6]

PO2 Arriola and the informant proceeded inside the Jollibee, Mango Avenue Branch to meet with Tripoli while the rest of the team stayed outside. SPO1 Roel Del Socorro (SPO1 Del Socorro) received a text message from PO2 Arriola informing him that the transaction was moved to the Queensland Motel. PO2 Arriola, the informant, and Tripoli went to Queensland

---

[3] *Rollo*, p. 4; CA *rollo*, p. 53.

[4] CA *rollo*, p. 53.

[5] *Id*. at 54.

[6] *Rollo*, p. 5; CA *rollo*, p. 54.

Motel and checked in at room 315 while SPO1 Del Socorro and PO2 Bezaleel Olmedo (PO2 Olmedo) stayed outside the motel.[7]

At around 8:00 p.m., PO2 Arriola informed SPO1 Del Socorro thru text message that Tripoli will be going out of the motel to get the *shabu* and will return before 1:00 a.m. When Tripoli left, SPO1 Del Socorro and PO2 Olmedo entered room 315 to join PO2 Arriola and the informant.[8]

Shortly before 1:00 a.m., they heard a knock on the door. SPO1 Del Socorro and PO2 Olmedo hid inside the bathroom leaving the door slightly open so they could see who would enter the room and easily hear the conversation. SPO1 Del Socorro and PO2 Olmedo saw Tripoli enter the room with Impas. Impas handed the two plastic packets of *shabu* to PO2 Arriola, who gave "bodol" money to Tripoli. SPO1 Del Socorro and PO2 Olmedo went out of the bathroom and immediately arrested the two accused after a short scuffle. The marked buy-bust money and "bodol" money were recovered from Tripoli. They were apprised of their constitutional rights and were brought to CIIB office at Camp Sotero Cabahug.[9]

The two plastic packets were turned over to PO3 Filomeno Mendaros (PO3 Mendaros), who marked both with the initials of the accused-appellants (RT/RI-BB-1 and RT/RI-BB-2). The Chief of CIIB Police Senior Inspector Rodolfo Calope Albotra, Jr. requested the PNP crime laboratory to conduct an examination of the contents of the two plastic packets for the presence of methamphetamine hydrochloride or *shabu*. PO2 Dhonel Salazar (PO2 Salazar) delivered the request and the confiscated two plastic packets to the PNP crime laboratory which were received by PO3 Rias. P/Inspector Patriana conducted a laboratory examination and issued Chemistry Report No. D-139-2003 stating that the two plastic packets marked RT/RI-BB-1 and

---

[7] *Rollo*, pp. 5-6; CA *rollo*, pp. 54-55.

[8] *Rollo*, p. 6; CA *rollo*, p. 55.

[9] *Rollo*, pp. 6-7; CA *rollo*, p. 55.

RT/RI-BB-2 contained a total weight of 5.64 grams of white crystalline substance which tested positive for methamphetamine hydrochloride or *shabu*.[10]

For the defense, Tripoli declared that he worked as an asset for his former classmate PO2 Salazar. On January 26, 2003, PO2 Salazar asked him to go to the CIIB Office where he found SPO1 Del Socorro, PO2 Arriola, PO2 Olmedo and PO2 Salazar discussing a buy-bust operation to be conducted on a certain "Erwin". He was told to join the buy-bust operation and was tasked to convince Erwin to sell *shabu* to PO2 Arriola. He knew Erwin because he accompanied Erwin's friend Patoc the day before to conduct a test-buy in Erwin's house.[11]

He accompanied PO2 Arriola, but instead of going to Erwin's house at the Ponce Compound, they proceeded to Queensland Motel. They checked-in and Tripoli was instructed to go to Ponce Compound and inform Erwin that a *shabu* buyer was waiting for him in Queensland Motel. He and Erwin went back to the Queensland Motel and after negotiations, PO2 Arriola gave the PhP10,000 "bodol" money, including the buy-bust money, to Erwin. Tripoli was instructed to accompany Erwin to the latter's house to get the *shabu*. Erwin asked him to wait for him as he would get the *shabu* elsewhere. Tripoli waited for several hours for Erwin until a stranger, whom he later knew as Romulo Impas (Impas), arrived and warned him that his life was in danger and that Erwin will not be coming back. Impas then accompanied him back to Queensland Motel and reported what happened. Tripoli and Impas returned to the CIIB Office, where they were interrogated and arrested.[12]

Impas testified and corroborated Tripoli's testimony. He heard from the bystanders in the Ponce Compound that they will hurt Tripoli, whom they believed was a police asset. Impas approached Tripoli and warned him that his life was in danger. He then

---

[10] *Rollo*, p. 7; CA *rollo*, pp. 55-56.

[11] *Rollo*, pp. 7-8; CA *rollo*, p. 56.

[12] *Rollo*, pp. 8-9; CA *rollo*, pp. 56-57.

offered to accompany Tripoli back to Queensland Motel. They entered the room and saw two people inside. There was a knock at the door by someone who identified himself as a police officer. Tripoli was asked where the PhP10,000 was, to which he replied, that it was with Erwin. Thereafter, they were brought to the police station where they were interrogated.[13]

The RTC found merit in the prosecution's witnesses' testimonies. It also noted that though the prosecution failed to present the "bodol" money, it held that "delivery", which is one of the acts punishable in Section 5, Article II of RA 9165, is present in the instant case. It disposed, thus:

> WHEREFORE, PREMISES CONSIDERED, this Court finds both accused RICHARD TRIPOLI Y FALCON and ROMULO IMPAS Y BALCONAN, GUILTY of violating Section 5, Article II of Republic Act No. 9165. Each is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a FINE of ₱500,000.00.
>
> The two plastic packs found to be positive for the presence of methamphetamine hydrochloride are ordered confiscated and shall be destroyed in accordance with law.
>
> SO ORDERED.[14]

The CA sustained the conviction of the accused-appellants. It ruled that the failure to mark the two pieces of one hundred peso bills as buy-bust money and the "bodol" money, and its non-presentation in court, are not fatal to the cause of the prosecution. It likewise ruled that the failure to show that the police officers conducted the required physical inventory, photographed the evidence seized, and immediately marked the seize items does not automatically impair the integrity of the chain of custody. It ruled that the prosecution was able to prove that the chain of custody of the seized prohibited drugs remained intact from the time the drugs were recovered until they were submitted to the crime laboratory for testing and then to the court. The CA disposed, as follows:

---

[13] *Rollo*, p. 9.

[14] CA *rollo*, p. 67.

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated March 31, 2008 of the Regional Trial Court of Cebu City, Branch 10 in Criminal Case No. CBU-65243 for Violation of Section 5, Article II, Republic Act No. 9165 is AFFIRMED.

SO ORDERED.[15]

Tripoli filed this appeal before Us, reiterating his arguments that his guilt was not proven beyond reasonable doubt because the informant was not presented in court; the *corpus delicti* and the chain of custody was not duly established; the presumption of innocence prevails over the presumption of regular performance of official duties; the chemistry report does not prove the guilt of the accused-appellant beyond reasonable doubt; and the accused-appellant was not properly informed of his constitutional rights.

The Office of the Solicitor General (OSG) countered that the presentation of the informant is not a requisite in the prosecution of drug cases and that what is important is the preservation of the integrity and the evidentiary value of the seized drugs.

We find no merit in the appeal.

The essential elements for illegal sale of *shabu* are as follows: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.[16] The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[17] These elements are present in this case.

Accused-appellants' argument that the failure to present the informant is fatal to the prosecution's cause fails to impress.

---

[15] *Rollo*, pp. 22-23.

[16] *People v. Jayson Curillan Hambora*, G.R. No. 198701, December 10, 2012.

[17] *People v. Sic-Open y Dimas*, G.R. No. 211680, September 21, 2016.

There is no need to present the informant/poseur-buyer/police asset.

First, the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded.[18]

Second, the identities of the accused-appellants were also confirmed by SPO2 Del Socorro and PO2 Olmedo. While the Court sanctions an acquittal for failure to present the informant, it does so when the police officers involved had no personal knowledge of the transaction. Here, the witnesses were inside the hotel room where the sale had transpired. Although they were in the bathroom when the accused-appellants entered the room, they left the door ajar so that they could hear and see what was happening. There was, therefore, no need for the presentation of the informant since the other witnesses presented had personal knowledge of the transaction as well.

With regard to the accused-appellants' argument that Section 21 of RA 9165 was ignored, We find that the requirements of Section 21 of RA 9165 were substantially complied with.

The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items such that doubts as to the identity of the evidence are eliminated. "To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence."[19]

---

[18] *People v. Rosauro*, G.R. No. 209588, February 18, 2015.

[19] *People v. Araza*, G.R. No. 190623, November 17, 2014.

As the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution, either by accident or otherwise.[20]

This means that on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, is the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."[21]

In this case, accused-appellants point to the police officers' failure to mark the evidence at the crime scene, lack of inventory and photographs as affecting the integrity of the chain of custody. However, such failure does not, by itself, void the arrest of the accused-appellants or impair the integrity of the chain of custody.

The case of *People v. Cardenas*[22] states the same:

We held thus in *Zalameda v. People of the Philippines*:

Jurisprudence teems with pronouncements that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. **What is of utmost importance is the *preservation of the integrity and the evidentiary value of the seized items*, as these would be utilized in the determination of the guilt or innocence of the accused.** In the present case, we see

[20] *People v. Renato Lapasaran*, G.R. No. 198820, December 10, 2012.

[21] *People v. Arturo Enriquez*, G.R. No. 197550, September 25, 2013.

[22] G.R. No. 190342, March 21, 2012.

substantial compliance by the police with the required procedure on the custody and control of the confiscated items, thus showing that the integrity of the seized evidence was not compromised. We refer particularly to the succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, under a situation where no objection to admissibility was ever raised by the defense. All these, to the unprejudiced mind, show that the evidence seized were the same evidence tested and subsequently identified and testified to in court. In *People v. Del Monte*, we explained:

> We would like to add that **non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence.** Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will {sic} accorded it by the courts. x x x
>
> **We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight evidentiary merit or probative value to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.** (Emphasis supplied.)

Here, the prosecution effectively established that the chain of custody of the seized dangerous drugs from the time of seizure, marking, submission to the laboratory for testing, and presentation in court remained intact. PO2 Arriola was the one who received the two packets of *shabu* from Impas. After their arrest and when the team brought the accused-appellants to the police station, the two packets were given to PO3 Mendaros who marked them. PO2 Salazar then delivered the laboratory request and the two packets of *shabu* to the crime laboratory

which was received by PO3 Rias. P/Inspector Patriana conducted the testing of the two packets, and the same were presented and identified in court. Clearly, the prosecution was able to substantially comply with the rules, showing by records and testimony, the whereabouts of the seized items from the time of its seizure.

Tripoli insists that the lack of proof of a physical inventory of the items seized and failure to photograph them in the presence of the accused and of other personalities specified by Section 21 (a), Article II of the IRR of RA 9165 raise uncertainty and doubts as to the identity and integrity of the articles seized from the accused whether they were the same items presented at the trial court that convicted him. Based on this non-compliance by the arresting officers, the defense insists the acquittal of the accused.

Consequently, although We find that the police officers did not strictly comply with the requirements of Section 21, Article II of the IRR implementing RA 9165, the non-compliance did not affect the evidentiary weight of the drugs seized from the accused, because the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

Finally, the accused-appellants only raised the issue of non-compliance with RA 9165 for the first time in the CA. As such, the Court cannot now dwell on the matter because to do so would be against the tenets of fair play and equity. In the case of *People v. Bartolome,*[23] although it appears that the buy-bust team did not literally observe all the requirements, like photographing the confiscated drugs in the presence of the accused, a representative from the media and from the Department of Justice, and any elected public official who should be required to sign the copies of the inventory and be given a copy of it, whatever justification the members of the buy-bust team had to render in order to explain their non-observance of all the requirements would remain unrevealed because the accused did not assail such non-compliance during the trial.

[23] G.R. No. 191726, February 6, 2013.

It was likewise held in *People v. Ros*[24] that "the law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds that may excuse the police officers involved in the buy-bust operation x x x from complying with Section 21 will remain unknown, because appellant did not question during trial, the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of RA 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant (at) least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal." The same is true for this case.

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision . dated March 28, 2012 of the Court of Appeals (CA), Cebu City in CA-G.R. CEB-CR-H.C. No. 00979, which affirmed the March 31, 2008 Decision of the RTC of Cebu City, Branch 10, in Criminal Case No. CBU-65243, convicting accused-appellants Richard F. Tripoli and Romulo B. Impas for violation of Section 5, Article II, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta,[*] *Bersamin,* and *Reyes, JJ.*, concur.

---

[24] G.R. No. 201146, April 15, 2015.

[*] Designated as additional member as per Raffle dated March 15, 2017.

SECOND DIVISION

[G.R. No. 210266. June 7, 2017]

ANTHONY DE SILVA CRUZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. **POLITICAL LAW; ACCESS DEVICES REGULATION ACT OF 1998 (RA 8484); ACCESS DEVICE; A CREDIT CARD IS CONSIDERED AS AN ACCESS DEVICE.—** Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998, defines an access device as: any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument). Since a credit card is "any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or anything of value on credit," it is considered an access device.

2. **ID.; ID.; POSSESSION AND USE OF COUNTERFEIT ACCESS DEVICE IS ACCESS DEVICE FRAUD PUNISHABLE BY LAW.—** Section 9(a) and (e) make the possession and use of a counterfeit access device as "access device fraud" that is punishable by law. x x x A counterfeit access device is "any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or counterfeit access device." Under Section 9(a) and (e) of Republic Act No. 8484, the possession and use of an access device is not illegal. Rather, what is prohibited is the possession and use of a *counterfeit* access device. Therefore, the *corpus delicti* of the crime is not merely the access device, but *also* any evidence that proves that it is counterfeit.

3. **ID.; ID.; ID.; PENALTIES.—** Possession of a counterfeit access device is punishable by imprisonment of not less than six (6)

years and not more than 10 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher. On the other hand, use of a counterfeit access device is punishable by imprisonment of not less 10 years but not more than 12 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher: x x x.

4. **REMEDIAL LAW; PRE-TRIAL GUIDELINES UNDER A.M. NO. 03-1-09-SC; RULE THAT NO EVIDENCE SHALL BE ALLOWED DURING TRIAL IF IT WAS NOT IDENTIFIED AND PRE-MARKED DURING PRE-TRIAL; EXCEPTION; WHEN ALLOWED BY THE COURT FOR GOOD CAUSE SHOWN; CASE AT BAR.—** The rule is that no evidence shall be allowed during trial if it was not identified and pre-marked during trial. This provision, however, allows for an exception: when allowed by the court for good cause shown. There is no hard and fast rule to determine what may constitute "good cause," though this Court has previously defined it as any substantial reason "that affords a legal excuse." The trial court retains its discretion to allow any evidence to be presented at trial even if not previously marked during pre-trial. Here, the trial court allowed the presentation of the counterfeit credit card at trial due to the prosecution's explanation that during pre-trial, the counterfeit credit card was still in the Criminal Investigation and Detective Group's custody: x x x The prosecution was able to present and mark during pre-trial Citibank's certification that the access device used was counterfeit. It is this certification that makes the possession and use of the access device illegal. Therefore, the trial court determined that the access device could still be presented at trial since it merely formed part of an exhibit that had already been presented and marked during pre-trial.

APPEARANCES OF COUNSEL

Duran & Duran-Schulze Law for petitioner.
Office of the Solicitor General for respondent.

DECISION

LEONEN, *J*.:

The possession and use of a counterfeit credit card is considered access device fraud and is punishable by law. To successfully sustain a conviction for possession and use of a counterfeit access device, the prosecution must present not only the access device but also any evidence that proves that the access device is counterfeit.

This resolves a Petition[1] for Review on Certiorari assailing the Decision[2] dated July 4, 2013 and Resolution[3] dated November 26, 2013 of the Court of Appeals, which affirmed the conviction of petitioner Anthony De Silva Cruz (Cruz) by the Regional Trial Court[4] for violation of Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998.

Cruz was charged with violation of Section 9(a) and (e) of Republic Act No. 8484, which provide:

SECTION 9. *Prohibited Acts*. — The following acts shall constitute access device fraud and are hereby declared to be unlawful:

(a) producing, using, trafficking in one or more counterfeit access devices;

. . . .

(e) possessing one or more counterfeit access devices or access devices fraudulently applied for[.]

The Informations against him read:

Under Criminal Case No. 06-0479

That on or about the 18th day of April 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the

---

[1] *Rollo*, pp. 9-27.

[2] *Id*. at 28-41.

[3] *Id*. at 42-43.

[4] *Id*. at 46-56.

above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control a counterfeit access device (Citibank Visa Card with No. 4539 7207 8677 7008) in violation of the aforecited law.

CONTRARY TO LAW.

. . . .

Under Criminal Case No. 06-0480

That on or about the 18th day of April 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use a counterfeit Citibank Visa Card with No. 4539 7207 8677 7008 an access device, in buying from complainant Duty Free Philippines herein represented by Redentor M. Quejada, one (1) pair of Ferragamo shoes worth US$363.00, to the damage and prejudice of the complainant in the aforementioned amount of US$363.00 or ₱18,876.00 more or less.

CONTRARY TO LAW.

. . . .

Under Criminal Case No. 06-0481

That on or about the 18th day of April 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use a counterfeit Citibank Visa Card with No. 4539 7207 8677 7008 an access device, in buying from complainant Duty Free Philippines herein represented by Redentor M. Quejada, two (2) bottles of perfume worth US$96.00, to the damage and prejudice of the complainant in the aforementioned amount of US$96.00 or ₱4,992.00 more or less.

CONTRARY TO LAW.[5]

Cruz was arraigned on October 17, 2006, where he pleaded not guilty for each charge.[6] Trial on the merits ensued.[7]

---

[5] *Id*. at 46-47, Regional Trial Court Decision.

[6] *Id*. at 47.

[7] *Id*.

According to the prosecution, on April 18, 2006, at around 7:30 p.m., Cruz allegedly tried to purchase two (2) bottles of Calvin Klein perfume worth US$96.00 from Duty Free Philippines Fiesta Mall. Danilo Wong (Wong), the cashier at the Perfume Section, testified that Cruz paid for the purchase using a Citibank Visa credit card.[8] The transaction was approved, although Wong doubted the validity of the credit card since the number at the back was not aligned.[9]

At around 8:00 p.m., Cruz allegedly tried to purchase a pair of Ferragamo shoes worth US$363.00.[10] Ana Margarita Lim (Lim), the cashier on duty, facilitated the sales transaction.[11] Cruz paid for the purchase using a Citibank Visa credit card bearing the name "Gerry Santos," with credit card number 4539 7207 8677 7008.[12] When Lim asked for Cruz's Duty Free shopping card, Cruz presented a shopping card with the name of "Rodolfo Garcia."[13] Lim asked for another identification card, and Cruz gave her a driver's license bearing the name "Gerry Santos."[14]

Lim proceeded to the mall's Electronic Section to swipe the credit card for approval.[15] The card was approved, but she noticed that the last four (4) digits of the card were not properly embossed and its validity date started in November 2006.[16] She called Citibank to verify the credit card.[17]

---

[8] *Id*. at 49 and 55.

[9] *Id.*

[10] *Id*. at 48 and 55.

[11] *Id*.

[12] *Id*. at 55.

[13] *Id*. at 30.

[14] *Id*. at 48.

[15] *Id*. at 48.

[16] *Id*.

[17] *Id*.

Upon verification, Citibank informed Lim that the credit card was counterfeit and that the real Gerry Santos was the Head of Citibank's Fraud Risk Management Division.[18] Lim was advised to transfer the matter to the Security Department.[19]

Redentor Quejada, Security Supervisor of Duty Free Philippines, testified that he and two (2) other guards held Cruz and his companion, Rodolfo De Silva Cruz, at the security office until the representative from Citibank arrived. At around 9:00 p.m. to 10:00 p.m., Gerardo T. Santos, Head of Citibank's Fraud Risk Management Division, arrived with members of the Philippine National Police - Criminal Investigation Detective Group, together with a certain Atty. Abad Santos, who was allegedly Cruz's lawyer.[20] Before Redentor Quejada could turn Cruz over to the police, Cruz tried to escape with the help of Atty. Abad Santos. The security officers, however, were able to close the mall's main gate, which prevented their escape.[21]

Cruz and Rodolfo De Silva Cruz were turned over to the Criminal Investigation Detective Group and brought to Camp Crame for questioning.[22] Citibank Visa credit card number 4539 7207 8677 7008 was also turned over to the Criminal Investigation Detective Group.[23]

Gerardo T. Santos (Santos) testified that he first heard of Cruz's name in May 2004.[24] Cruz and his wife Aileen were then managing Antonely's Fabric Warehouse and were involved in incidents related to credit card fraud. Santos did not file a case against them for lack of basis. He came across Cruz's name again in 2005, with regard to a fraudulent transaction

---

[18] *Id*.

[19] *Id*.

[20] *Id*. at 50.

[21] *Id*. at 31.

[22] *Id*. at 51.

[23] *Id*. at 50-51.

[24] *Id*. at 49.

with a Thai restaurant in Shoemart Megamall.[25] He also testified that the credit card number was validly issued to a certain Jessamine Bongat, and that the counterfeit credit card had been previously used on several fraudulent occasions.[26]

After the prosecution formally offered their evidence, Cruz filed a Demurrer to Evidence asserting that the credit card was inadmissible since it was presented and offered by the prosecution in violation of A.M. No. 03-1-09-SC.[27]

On August 6, 2009, Branch 274 of the Regional Trial Court of Parañaque City denied the Demurrer to Evidence and stated that the credit card receipts were properly identified by the witnesses.[28] The trial court also stated that the alleged counterfeit credit card was offered in evidence by the prosecution.[29]

Despite notice, Cruz and his counsel did not appear during the scheduled hearings for the presentation of his defense. Later, Cruz manifested to the trial court that he was waiving his right to present evidence.[30]

On May 5, 2010, the trial court rendered its Judgment[31] finding Cruz guilty beyond reasonable doubt of violation of Section 9(a) and (e) of Republic Act No. 8484 in Criminal Case Nos. 06-0479 and 06-0480, when he used a counterfeit access device to purchase a pair of shoes worth US$363.00. However, it acquitted Cruz in Criminal Case No. 06-0481 upon finding that

---

[25] *Id*. at 49.

[26] *Id*. at 53.

[27] *Id*. at 31. A.M. No. 03-1-09-SC (2004), Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures.

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

[29] *Id*. at 31.

[30] *Id*. at 32.

[31] *Id*. at 46-56. The Decision, docketed as Criminal Case No. 06-0479, was penned by Presiding Judge Fortunito L. Madrona of Branch 274 of the Regional Trial Court, Parañaque.

the prosecution failed to prove his guilt beyond reasonable doubt of using a counterfeit access device to purchase two (2) bottles of perfume worth US$96.00.[32] The dispositive portion of the Judgment reads:

WHEREFORE, all the foregoing considered, the Court finds the accused ANTHONY DE SILVA CRUZ as follows:

(1) Under Criminal Case No. 06-0479, GUILTY beyond reasonable doubt of the offense of Violation of Section 9, par. (a) of Republic Act No. 8484, as stated in the Information, and accordingly hereby penalizes the said accused to suffer indeterminate sentence of fine of Ten Thousand Pesos (₱10,000.00) and imprisonment of six (6) years prision correccional as minimum, to ten (10) years prision mayor as maximum.

(2) Under Criminal Case No. 06-0480, GUILTY beyond reasonable doubt of the offense of Violation of Section 9, par. (a) of Republic Act No. 8484 as stated in the Information, and accordingly hereby sentences the said accused to suffer indeterminate sentence of fine of Ten Thousand Pesos (₱10,000.00) and imprisonment of ten (10) years prision mayor as minimum to twelve (12) years prision mayor as maximum.

(3) Under Criminal Case No. 06-0481, NOT GUILTY of the offense of Violation of Section 9, par. (a) of Republic Act No. 8484 as charged in the Information, and accordingly hereby acquits the said accused therefrom.

SO ORDERED.[33]

Aggrieved, Cruz appealed to the Court of Appeals. On July 4, 2013, the Court of Appeals rendered the Decision[34] denying the appeal and upholding Cruz's conviction.

---

[32] *Id*. at 55.

[33] *Id*. at 56.

[34] *Id*. at 28-41. The Decision, docketed as CA-G.R. CR No. 33756, was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta (Chair) and Francisco P. Acosta of the Tenth Division, Court of Appeals, Manila.

According to the Court of Appeals, the prosecution was able to establish that Cruz had in his possession a counterfeit access device.[35] It also held that A.M. No. 03-1-09-SC does not absolutely preclude the admission of evidence that has not been pre-marked during pre-trial since courts may, in its discretion and "for good cause shown," still admit the evidence.[36]

However, the Court of Appeals modified the penalties to delete the words "*prision correccional*" and "*prision mayor*" as the law itself[37] provides the penalties to be imposed.[38] The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DISMISSED**. The Judgment of the Regional Trial Court of Parañaque City in Criminal Case Nos. 06-0479 & 06-0480 are **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case Nos. 06-0479, accused-appellant **ANTHONY DE SILVA CRUZ** is found guilty beyond reasonable doubt of violation

---

[35] *Id.* at 35.

[36] *Id*. at 36.

[37] Rep. Act No. 8484 (1998), Sec. 10 provides:

SECTION 10. *Penalties*. – Any person committing any of the acts constituting access device fraud enumerated in the immediately preceding section shall be punished with:

(a) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, whichever is greater and imprisonment for not less than six (6) years and not more than ten (10) years, in the case of an offense under Section 9 (b)-(e), and (g)-(p) which does not occur after a conviction for another offense under Section 9;

(b) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, and imprisonment for not less than ten (10) years and for not more than twelve (12) years, in the case of an offense under Section 9 (a), and (f) of the foregoing section, which does not occur after a conviction for another offense under Section 9; and

(c) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, or imprisonment for not less than twelve (12) years and not more than twenty (20) years, or both, in the case of any offense under Section 9, which occurs after a conviction for another offense under said subsection, or an attempt to commit the same.

[38] *Rollo*, p. 39.

of Section 9(e) of R.A. No. 8484 and is sentenced to a prison term of six (6) years, as minimum, to ten (10) years, as maximum, and to pay a fine of Ten Thousand Pesos (₱10,000.00).

In Criminal Case No. 06-0480, accused-appellant ANTHONY DE SILVA CRUZ is found guilty beyond reasonable doubt of violation of Section 9(a) of the R.A. No. 8484 and is sentenced to a prison term of ten (10) years, as minimum, to twelve (12) years, as maximum, and to pay a fine of US$726.00 or ₱37,752.00.

SO ORDERED.[39] (Emphasis in the original)

Cruz moved for reconsideration, but the Motion was denied in the Resolution[40] dated November 26, 2013.

Hence, petitioner Anthony De Silva Cruz filed before this Court a Petition for Review on Certiorari.[41]

Petitioner argues that according to A.M. No. 03-1-09-SC, the *corpus delicti* or the alleged counterfeit credit card is inadmissible since it was not marked and identified during pre-trial.[42] He alleges that the testimonies of the prosecution's witnesses were inconsistent as to the identification of the credit card and its eventual turnover to the police.[43] Petitioner asserts that the trial court and the Court of Appeals disregarded the constitutional presumption of innocence by making an inference of guilt based on his silence during trial.[44]

The Office of the Solicitor General, on the other hand, maintains that the counterfeit credit card is admissible as evidence since A.M. No. 03-1-09-SC allows the trial court to admit the

---

[39] *Id*. at 40.

[40] *Id*. at 42-43. The Resolution was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Former Tenth Division, Court of Appeals, Manila.

[41] *Id*. at 9-27.

[42] *Id*. at 19.

[43] *Id*. at 20-23.

[44] *Id*. at 23-24.

evidence, if, in its discretion, there was "good cause shown" for its admission.[45] It also notes that there was no inconsistency between Lim's and Wong's testimonies, since they were testifying on two different situations they witnessed.[46]

The Office of the Solicitor General further argues that "the unexplained failure of the accused to testify . . . gives rise to an inference that he did not want to testify because he did not want to betray himself."[47] It points out that petitioner's attempt to flee the premises is an implied admission of guilt.[48]

While the case was pending before this Court, petitioner's counsel withdrew[49] and another counsel entered an appearance on his behalf. A Motion for Leave of Court to File Supplemental Petition for Review was filed together with the Entry of Appearance of his new counsel.[50]

Aside from reiterating that the prosecution witnesses' testimonies were inconsistent with each other,[51] petitioner insists that his former counsel negligently defended his cause by failing to present evidence on his behalf and failing to cross-examine the prosecution's witnesses.[52] Petitioner adds that Redentor Quejada was not duly authorized by Duty Free Philippines to file the complaint on its behalf based on an invalid Special Power of Attorney.[53] Thus, he prays that the July 4, 2013 Decision and November 26, 2013 Resolution be reversed, or

---

[45] *Id*. at 92, Comment.

[46] *Id*. at 94.

[47] *Id*. at 95.

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

[49] *Id*. at 107.

[50] *Id*. at 110-127. The Entry of Appearance was noted by this Court in a Resolution dated August 31, 2016.

[51] *Id*. at 118.

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

[53] *Id*. at 115-118.

in the alternative, the case be remanded to the trial court for the presentation of his evidence.[54]

The issues for resolution are:

First, whether the prosecution was able to prove beyond reasonable doubt that petitioner was guilty of violating Section 9(a) and (e) of Republic Act No. 8484. Corollary to this is whether the counterfeit access device can still be presented in trial despite not having been presented and marked during pre-trial; and

Second, whether the negligence of petitioner's former counsel binds petitioner.

I

Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998, defines an access device as:

> any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument).[55]

Since a credit card is "any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or anything of value on credit,"[56] it is considered an access device.

Section 9(a) and (e) make the possession and use of a counterfeit access device as "access device fraud" that is punishable by law:

> SECTION 9. *Prohibited Acts*. – The following acts shall constitute access device fraud and are hereby declared to be unlawful:

---

[54] *Id*. at 124.

[55] Rep. Act No. 8484 (1998), Sec. 3(a).

[56] Rep. Act No. 8484 (1998), Sec. 3(f).

(a) producing, using, trafficking in one or more counterfeit access devices;

. . . .

(e) possessing one or more counterfeit access devices or access devices fraudulently applied for[.]

A counterfeit access device is "any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or counterfeit access device."[57] Under Section 9(a) and (e) of Republic Act No. 8484, the possession and use of an access device is not illegal. Rather, what is prohibited is the possession and use of a *counterfeit* access device. Therefore, the *corpus delicti* of the crime is not merely the access device, but *also* any evidence that proves that it is counterfeit.

Petitioner was found in possession of Citibank Visa credit card number 4539 7207 8677 7008, which bore the name "Gerry Santos."[58] He used the same credit card to purchase Ferragamo shoes worth US$363.00 at Duty Free Fiesta Mall.[59] Citibank Visa credit card number 4539 7207 8677 7008 was later proven to be a counterfeit access device.[60]

Possession of a counterfeit access device is punishable by imprisonment of not less than six (6) years and not more than 10 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher. On the other hand, use of a counterfeit access device is punishable by imprisonment of not less 10 years but not more than 12 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher:

---

[57] Rep. Act No. 8484 (1998), Sec. 3(b).

[58] *Rollo*, pp. 35 and 55.

[59] *Id*.

[60] *Id.*

SECTION 10. *Penalties*. — Any person committing any of the acts constituting access device fraud enumerated in the immediately preceding section shall be punished with:

(a) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, whichever is greater and imprisonment for not less than six (6) years and not more than ten (10) years, in the case of an offense under Section 9 (b)-(e), and (g)-(p) which does not occur after a conviction for another offense under Section 9;

(b) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, and imprisonment for not less than ten (10) years and for not more than twelve (12) years, in the case of an offense under Section 9 (a), and (f) of the foregoing section, which does not occur after a conviction for another offense under Section 9[.][61]

Petitioner, having been found guilty beyond reasonable doubt, was sentenced to suffer the penalty of imprisonment of 10 years as minimum to 12 years as maximum and a fine of US$726.00 for violation of Section 9(a) of Republic Act No. 8484. He was also sentenced to suffer the penalty of imprisonment of six (6) years as minimum to 10 years as maximum and a fine of ₱10,000.00 for violation of Section 9(e) of Republic Act No. 8484.[62]

II

Petitioner argues that according to A.M. No. 03-1-09-SC,[63] the alleged counterfeit credit card should not have been admitted as evidence because it was not pre-marked during pre-trial.[64]

A.M. No. 03-1-09-SC, Sec. I(A)(2) provides that:

---

[61] Rep. Act No. 8484 (1998), Sec. 10.

[62] *Rollo,* p. 40.

[63] Re: Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (2004).

[64] *Rollo,* p. 16.

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

. . . .

d. The documents or exhibits to be presented, stating the purpose thereof. (No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown)[.]

The rule is that no evidence shall be allowed during trial if it was not identified and pre-marked during pre-trial. This provision, however, allows for an exception: when allowed by the court for good cause shown. There is no hard and fast rule to determine what may constitute "good cause," though this Court has previously defined it as any substantial reason "that affords a legal excuse."[65]

The trial court retains its discretion to allow any evidence to be presented at trial even if not previously marked during pre-trial. Here, the trial court allowed the presentation of the counterfeit credit card at trial due to the prosecution's explanation that during pre-trial, the counterfeit credit card was still in the Criminal Investigation and Detective Group's custody:

Court:	Additional direct?
Pros. Rodriguez:	Yes, additional direct. For identification only of the credit card. The credit card is already here.
Atty. De Guia:	Your Honor, we would like to put our continuing objection to the presentation of the credit card because it was not presented during pre-trial.
Pros. Rodriguez:	This credit card, Your Honor, is part of Exhibit "F," Your Honor.

[65] *Fortune Corporation v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 371 [Per *J*. Regalado, Second Division].

Atty. De Guia:	In fact, Your Honor, if I am not mistaken, this is supposed to be the cross-examination already of the . . .
Pros. Rodriguez:	*We made a reservation considering that this document was not available during pre-trial, Your Honor.*
Atty. De Guia:	Precisely, Your Honor, that's our objection.
Pros. Rodriguez:	But *it forms part of Exhibit F*, Your Honor, the Certification that this card is not a genuine card of the Citibank.
Atty. De Guia:	But then precisely, Your Honor, the prosecutor is alleging that this credit card is actually the document, their failure to present them during pre-trial and mark properly, this is the consequence of their omission, Your Honor, with due respect.
Pros. Rodriguez:	During the pre-trial, this card was not available at that time. At that time this card was not yet available, it was in the custody of the police. The police never turned over this card to us.
Atty. De Guia:	That's precisely the reason, Your Honor, that the prosecution had ample time to present their case, make their case before filing this complaint, this information. And their failure should be taken against them, Your Honor. The rule on pre-trial order is mandatory, Your Honor. Any other evidence not presented in the pre-trial shall be excluded.
Pros. Rodriguez:	The defense is very desperate, Your Honor, on technicalities, but then this card forms part of Exhibit F where it is specifically mentioned.
Court:	It should form part of exhibit?
Pros. Rodriguez:	Exhibit F, Your Honor, the Certification that this card is not the . . .

Court:	The certification of Citibank?
Pros. Rodriguez:	Yes, that this card is not a genuine card. So this is F-1.
Court:	How come that it will be certification? That card?
Pros. Rodriguez:	No, that this card is not the – because this is a . . .
Court:	What is the certification of the Citibank Exhibit F? Does it mention that that card is part?
Pros. Rodriguez:	Yes. Your Honor. At this point, exhibiting to this Honorable Court Exhibit "F" reads that, "Citibank Visa Card with embossed account number 4539-7207-8677-7008," which is the physical evidence in this case presented to this Court, is a counterfeit, Your Honor. So, *this is only part of Exhibit F*.
Court:	*Okay, the Court will allow that*.
Atty. De Guia:	We will just put our continuing objection on record, Your Honor.[66] (Emphasis supplied)

The prosecution was able to present and mark during pre-trial Citibank's certification that the access device used was counterfeit. It is this certification that makes the possession and use of the access device illegal. Therefore, the trial court determined that the access device could still be presented at trial since it merely formed part of an exhibit that had already been presented and marked during pre-trial.

III

Petitioner points out the alleged inconsistencies in the testimonies of Ana Margarita Lim and Danilo Wong.[67] Wong

---

[66] *Rollo*, pp. 57-61, TSN dated August 1, 2007.

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

testified that the credit card presented in trial was not the same credit card that petitioner used in purchasing the Calvin Klein perfumes worth US$96.00.[68]

The determination of the credibility of witnesses is a question of fact that should not be reviewed by this Court in a petition for review on certiorari under Rule 45 of the Rules of Court.[69] There are exceptions to this rule;[70] however, none of those exceptions are present here. Even if we were to review the witnesses' testimonies, petitioner's argument would still be unmeritorious.

Two (2) transactions took place on the night of April 18, 2006: the purchase of perfumes at Counter 15[71] and the purchase of shoes at Counter 12.[72] Lim, the cashier for Counter 12, and Wong, the cashier for Counter 15, were called to testify on two (2) different transactions. There can be no inconsistency between two witnesses testifying on two different occurrences.

---

[68] *Id*. at 49.

[69] *See Caluag v. People*, 599 Phil. 717, 724–725 (2009) [Per *J*. Quisumbing, Second Division], citing *Lamis v. Ong*, 504 Phil. 84, 90 (2005) [Per *J*. Sandoval-Gutierrez, Third Division].

[70] See *Medina v. Mayor Asistio, Jr*., 269 Phil. 225, 232 (1990) [Per *J*. Bidin, Third Division]: "(1) When the conclusion is a finding grounded entirely on speculation, surmises or 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) The findings of the Court of Appeals 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 petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record."

[71] *Rollo*, p. 49.

[72] *Id*. at 48.

Petitioner also points out other inconsistencies in the prosecution witnesses' testimonies, such as whom among Lim and Redentor Quejada turned over the credit card to the police;[73] whether petitioner introduced himself;[74] and why Lim did not bother to make a copy of petitioner's driver's license.[75]

These alleged inconsistencies are minor and do not detract from the conclusion that petitioner used a counterfeit access device in the purchase of goods.

In any case, the trial court found these witnesses credible. Its assessment on the credibility of the witnesses is entitled to great weight and respect, especially if it is affirmed by the Court of Appeals.[76]

"[T]he flight of an accused discloses a guilty conscience."[77] Petitioner does not deny that he tried to escape from Duty Free Fiesta Mall when the police arrived. Taken together with the prosecution's evidence, it is enough to convince this Court that petitioner is guilty beyond reasonable doubt of possession and use of a counterfeit access device.

IV

Petitioner, now grasping at straws, argues that his previous counsel, Atty. Edwin Michael P. Musico (Atty. Musico), negligently defended his cause.[78]

---

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

[74] *Id*. at 22.

[75] *Id*.

[76] See *People v. Diu*, 708 Phil. 218, 232 (2013) [Per *J*. De Castro, First Division]: "Thus, it has been an established rule in appellate review that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the Court of Appeals."

[77] *People v. Dalinog*, 262 Phil.98, 111 (1990) [Per *C.J.* Fernan, Third Division], citing *People v. Anquillano*, 233 Phil. 456, 460-461 (1987) [Per *J*. Cruz, *En Banc*].

[78] *Rollo*, pp. 121-122.

The rule is that negligence of a counsel binds the client except: when counsel exhibits reckless or gross negligence that deprives the client of due process; when the outright application of the rule results in the deprivation of liberty and property through a technicality; or when it serves the interests of justice.[79]

Petitioner alleges that Atty. Musico negligently failed to attend scheduled hearings before the trial court, conduct cross-examination of the witnesses, and present evidence on his behalf.[80]

Records, however, show that petitioner's counsel was not prevented from objecting to the presentation of the counterfeit credit card during trial, which he repeatedly did and even offered continuing objection.[81] Atty. Musico was also able to cross-examine Lim and Redentor Quejada,[82] the two witnesses petitioner claimed had inconsistent testimonies. Atty. Musico even filed a Demurrer to Evidence after the prosecution made its formal offer.[83]

Although there were, indeed, instances where Atty. Musico failed to attend the scheduled hearings,[84] petitioner was never deprived of due process. The Order[85] dated February 8, 2010 of the trial court shows it was petitioner's decision to forego the presentation of evidence on his behalf:

---

[79] See *Dimarucot v. People*, 645 Phil. 218, 227 (2010) [Per *J*. Villarama, Jr., Third Division].

[80] *Rollo*, pp. 121-122.

[81] *Id*. at 57-61, TSN dated August 1, 2007. Petitioner's counsel on record for this hearing is a certain Atty. De Guia, although the pre-trial order (*Id*. at 44-45) states that petitioner's counsel is Atty. Edwin Michael P. Musico.

[82] *Id*. at 49 and 51.

[83] *Id*. at 31.

[84] *Id*. at 128-132.

[85] *Id*. at 133.

In today's hearing, the accused through counsel manifested that despite the resolution of the Demurrer to Evidence, the defense will not be presenting evidence. In view whereof [sic], the defense having considered as waiving the right to present evidence, this case is now submitted for decision.[86]

The burden of proof was on the prosecution. Petitioner did not even need to present evidence. To successfully sustain a conviction, the prosecution must rely on the strength of its evidence, and not on the weakness of the defense.[87] The prosecution's evidence in this case was enough to overcome the presumption of innocence.

We will no longer discuss petitioner's allegation that Redentor Quejada was not authorized by Duty Free Philippines to file the criminal complaint since petitioner failed to attach any proof to substantiate this allegation.

WHEREFORE, the Petition is **DENIED** for lack of merit. The Decision dated July 4, 2013 and Resolution dated November 26, 2013 of the Court of Appeals in CA-G.R. CR. No. 33756 are **AFFIRMED**.

The Motion for Leave of Court to File Supplemental Petition for Review on Certiorari dated November 30, 2015 is **DENIED** in view of the denial of the Petition.

SO ORDERED.

Carpio (Chaiperson) and *Velasco, Jr.,*[*] *JJ.,* concur,

Mendoza and *Martires, JJ.,* on official leave.

---

[86] *Id*.

[87] See *People v. Magallanes*, 231 Phil. 89, 98 (1987) [Per *J*. Paras, Second Division].

[*] Designated addiitonal member per Raffle dated May 29, 2017.

SECOND DIVISION

[G.R. No. 210654. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PABLO LUAD ARMODIA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE OF A WOMAN THROUGH FORCE, THREAT OR INTIMIDATION; COMMITTED IN CASE AT BAR.—** The prosecution has proven beyond reasonable doubt that accused-appellant had carnal knowledge of AAA against her will, through force, threat, or intimidation. x x x AAA's testimonies established that she was sexually abused by her father in the last week of March 2003 and on April 4, 2003. She categorically and positively identified accused-appellant as the perpetrator of the crime. She adequately recounted the details that took place, the dates of the incidents, how her father committed carnal knowledge against her, and his threats to wield the *lagting* if the crimes were revealed to others. Accused-appellant had carnal knowledge of AAA twice, through force and intimidation. His moral ascendancy also intimidated her into submission. This ascendancy or influence is grounded on his parental authority over his child, which is recognized by our Constitution and laws, as well as on the respect and reverence that Filipino children generally accord to their parents.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF CHILD RAPE VICTIM, UPHELD AS AGAINST BARE DENIALS AND ALIBIS.—** AAA's story cannot be trivialized as a mere fabrication or a tale allegedly weaved to take revenge for her father's strictness. Children are vulnerable. Generally, they do not have the maturity to execute complex strategies impelled by evil motives. That they would go through such lengths—exposing themselves and their families to dishonor by publicly narrating how their father stripped them of their innocence—only to get even for a trivial reason is, therefore, incredulous. Testimonies of child victims may not always be the absolute truth. Nevertheless, the

testimonies of child rape victims are generally entitled to full faith and credence. A girl who would willingly cause the examination of her private parts, allow the invasion of her privacy via an open trial, and recall the harrowing experiences she suffered in the hands of her own father must have been impelled by the desire to have the perpetrator caught and punished. More significantly, she must have been motivated by the need to be physically and psychologically protected from her assailant. x x x A child would not concoct a story of incest especially if it would result in losing one's father to prison. x x x As against these details and testimonies, all that accused-appellant has offered in defense are denials and alibis, defenses which jurisprudence has long considered as weak and unreliable.

3. **CRIMINAL LAW; RAPE; WHERE THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP WAS NOT SPECIFICALLY PLEADED IN THE INFORMATION ALTHOUGH PROVEN DURING TRIAL, THE CRIME COMMITTED IS SIMPLE RAPE.—** Accused-appellant committed two (2) counts of simple rape, not qualified rape. The crime of qualified rape under Article 266-B(1) of the Revised Penal Code consists of the twin circumstances of the victim's minority and her relationship to the perpetrator, both of which must concur and must be alleged in the information. It is immaterial whether the relationship was proven during trial if that was not specifically pleaded for in the information. The Court of Appeals and the Regional Trial Court found that accused-appellant's relationship with AAA was not duly alleged in the informations. Thus, his relationship with the victim cannot qualify the crimes of rape. Ruling otherwise would deprive him of his constitutional right to be informed of the nature and cause of accusation against him.

4. **ID.; ID.; PROPER PENALTY AND DAMAGES.—** Simple rape is punishable by *reclusion perpetua*. Even if the aggravating circumstances of minority and relationship were present, the appropriate penalty would still be *reclusion perpetua* under the law. Article 63 of the Revised Penal Code provides that "in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed." In view of the depravity of the

acts committed by accused-appellant against his daughter, we increase the amounts awarded to AAA, in accordance with jurisprudence: For each incident of rape through carnal knowledge, this Court modifies the award of civil indemnity from ₱50,000 to ₱100,000.00; moral damages from ₱50,000 to ₱100,000; and exemplary damages from ₱30,000 to ₱100,000.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J*.:

The rape of a minor constitutes moral depravity of the highest order. This is an appeal from a conviction for two (2) counts of rape of a child under Article 266-A (1) of the Revised Penal Code by a father, who twice fulfilled his desires on his own daughter.

Accused-appellant Pablo Luad Armodia (accused-appellant) and his wife, BBB, had three (3) children, the oldest of whom was AAA.[1] They owned a piggery[2] in Cambanay, Danao City, Cebu, located close to their house.[3] Beside this piggery was a makeshift room that served as the venue for the material incidents in this case.[4]

The first incident happened in the last week of March 2003, at about 8:00 p.m. Accused-appellant called for AAA and ordered her to sleep beside him in the makeshift room. The child obeyed her father. While AAA was lying down, accused-appellant

---

[1] *Rollo*, p. 5, Court of Appeals Decision.

[2] *Id.*

[3] *Id*. at 7.

[4] *Id*. at 5.

pinned her to the ground with his arms and legs. To ensure his success, he placed a *lagting*—a bolo used for cutting sugarcanes—a foot away from her head.[5]

AAA's agony then began to unfold. Accused-appellant slid his leg down from her hip and removed her shorts and underwear. Then, he stripped off his briefs and shorts and went on top of her. The child tried to push him away, but she was powerless against the figure that lunged towards her.[6]

Holding his penis, accused-appellant inserted it into his child's vagina. AAA felt pain as he penetrated her. He continued to thrust her until he ejaculated. Sexually satisfied at her daughter's expense, accused-appellant cleaned out the sperm left in her vagina. He threatened to kill anyone to whom she would report the incident. AAA kept quiet out of fear. She was then only 16 years old.[7]

The second incident happened in the same place. On April 4, 2003, around 3:00 a.m., accused-appellant shouted for her, who was asleep. His booming voice roused her up from slumber. He ordered her to give water to the hogs and she complied. Then, he commanded her to lie down in the makeshift room next to the piggery. Accused-appellant threatened to wield his *lagting* and chop off the heads of those who would find out what he was about to do.[8]

He grabbed her hands and legs, pinned her down on the floor, stripped off her panty, and removed his underwear. Going on top of her, he mashed her breasts and forced himself on her body.[9] His penis abused her vagina until he reached his climax.[10]

---

[5] *Id*.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 5-6.

Scooping his semen out of her vagina,[11] accused-appellant told AAA to rest easy as she would not get pregnant.[12]

The child could no longer remain quiet. The next day, on April 5, 2003, AAA finally revealed everything to her mother, BBB.[13] Crying and shaking, AAA informed BBB that her father raped her.[14]

On April 6, 2003, AAA and BBB reported the incident to their *punong barangay*, who thereafter informed the police.[15] She was brought to Vicente Sotto Memorial Medical Center, then Southern Island Hospital, for examination.[16]

Dr. Elvie Austria (Dr. Austria) examined AAA and issued a Medical Certificate.[17] The Medical Certificate stated, "Tanner IV, redundant."[18] It also stated that the "medical evaluation is suggestive of abuse."[19]

Accused-appellant was arrested on the same day.[20] He was charged with two (2) counts of rape of a minor under two (2) separate informations, the pertinent portions of which read as follows:

Criminal Case No. DNO-2983

That on or about April 4, 2003 at 3:00 o'clock (sic) at dawn more or less, in Cambanay, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did

---

[11] *Id*. at 6.

[12] *Id.* at 8.

[13] *Id*. at 8.

[14] *Id*. at 6.

[15] *Id*. at 8.

[16] *Id*. at 6.

[17] *Id*.

[18] *Id.*

[19] *Id*.

[20] *Id*. at 8.

then and there, with threats, intimidation and influence of moral ascendency, forcibly, willfully, unlawfully and feloniously have sexual intercourse with [AAA], a virgin over 12 years old but under 18 years of age.

CONTRARY TO LAW.

Criminal Case No. DNO-2998

That sometime in the last week of March, 2003, in Cambanay, Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, with threats, intimidation and influence of moral ascendency, forcibly, willfully, unlawfully and feloniously have sexual intercourse with [AAA], a virgin over 12 years old but under 18 years of age.

CONTRARY TO LAW.[21]

Accused-appellant was arraigned and pleaded "not guilty" to the rape charges.[22] On October 21, 2003, the State moved for leave to amend the informations and add the phrase, "being the father of the victim."[23]

On November 7, 2003, the Regional Trial Court denied the State's motion, ruling that the requested amendment was substantial and prejudicial to accused-appellant's right to be informed of the charges against him. The criminal cases were tried jointly.[24]

The State presented three (3) witnesses: pediatrician Dr. Naomi Poca (Dr. Poca), BBB, and AAA. Dr. Poca testified that another physician, Dr. Austria, examined AAA. She explained that the phrase "Tanner IV, redundant" in the Medical Certificate issued by Dr. Austria meant that AAA's hymen was "thickened, redundant, estrogenized (effect), and elastic;" in simple terms, it could "accommodate a penis or any object."[25]

---

[21] CA *rollo*, p. 26.

[22] *Id.* at 27.

[23] *Id*.

[24] *Id*.

[25] *Rollo*, p. 6.

For her part, BBB testified that accused-appellant was her husband and that AAA was their eldest child. On April 5, 2003, at about 7:00 p.m., AAA trembled and cried as she recounted to BBB accused-appellant's acts. The following day, BBB accompanied her daughter to Barangay Captain Tomas Gomez, who then reported the incidents to the police.[26]

Meanwhile, defense presented accused-appellant as its sole witness. He admitted that AAA was his daughter but denied the rape charges against him. According to him, the criminal cases were filed in retaliation for his strict upbringing of his children. Accused-appellant added that he was physically incapable of having sexual intercourse as two (2) years before the first alleged rape, he sustained a gunshot wound on the right portion of his body. Thus, whenever he had sex, "his wastes would go out of his intestines."[27]

On July 25, 2011, the Regional Trial Court convicted[28] accused-appellant of two (2) counts of simple rape.

Citing *People v. Ilao*,[29] it held that the "accused [cannot] be convicted of qualified rape, because of the prosecution's failure to include the relationship in the information[.]"[30] The trial court did not give credence to his defense of physical incapacity, as "his wife BBB testified that they had sexual congress many times."[31] The dispositive portion read:

> **WHEREFORE, FOR ALL THE FOREGOING** the court finds the accused **PABLO LUAD ARMODIA**:
>
> a) In Criminal Case No. DNO-2983, **GUILTY** beyond reasonable doubt for the crime of rape [under Article 266-

---

[26] *Id*.

[27] *Id*.

[28] CA *Rollo*, pp. 26-40. The Decision was penned by Assisting Judge Sylva G. Aguirre Paderanga of Branch 25, Regional Trial Court of Danao City.

[29] 357 Phil. 656 (1998) [Per *J*. Regalado, *En Banc*].

[30] CA *Rollo*, p. 39.

[31] *Rollo*, p. 6.

A(1), which is] punished under the provision of Article 266-B of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua*; and

b) In Criminal Case No. DNO-2998, **GUILTY** beyond reasonable doubt of the crime of rape [under Article 266-A(1), which is] punished under the provision of Article 266-B of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua*.

Accused is likewise directed to indemnify private complainant, [AAA], the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages for each count of rape pursuant to People v. Malana.

SO ORDERED.[32] (Emphasis in the original, citation omitted)

Accused-appellant appealed before the Court of Appeals, arguing that "the prosecution failed to prove his guilt beyond reasonable doubt."[33]

The Court of Appeals affirmed[34] with modification the Regional Trial Court's Decision, adding the payment of six percent (6%) legal interest in the award for damages. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this appeal is **DENIED**. The *Decision* of the Regional Trial Court, Branch 25, Danao City in Crim. Cases Nos. DNO-2983 and DNO-2998 dated July 25, 2011 is **AFFIRMED** with **MODIFICATION**. Armodia is further **ORDERED** to pay to pay [sic] interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision. No pronouncement as to costs.

SO ORDERED.[35] (Emphasis in the original)

---

[32] CA *rollo,* p. 40.

[33] *Rollo*, p. 7.

[34] *Id.* at 3-10. The Decision was promulgated on August 15, 2013, docketed as CA-G.R. CEB-C.R.-H.C. No. 01489, and was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla of the Twentieth (20th) Division, Court of Appeals, Cebu City.

[35] *Id*. at 10.

The case has reached this Court via a notice of appeal.[36] For resolution is whether accused-appellant is guilty of two (2) counts of simple rape.

We affirm the conviction.

I

The prosecution has proven beyond reasonable doubt that accused-appellant had carnal knowledge of AAA against her will, through force, threat, or intimidation.

Article 266-A (1)(a) of the Revised Penal Code states:

> 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[.]

AAA's testimonies established that she was sexually abused by her father in the last week of March 2003 and on April 4, 2003. She categorically and positively identified accused-appellant as the perpetrator of the crime. She adequately recounted the details that took place, the dates of the incidents, how her father committed carnal knowledge against her, and his threats to wield the *lagting* if the crimes were revealed to others.[37]

Accused-appellant had carnal knowledge of AAA twice, through force and intimidation. His moral ascendancy also intimidated her into submission. This ascendancy or influence is grounded on his parental authority over his child, which is

---

[36] RULES OF COURT, Rule 122, Sec. 3(c) states:

The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, *reclusion perpetua*, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

[37] *Rollo,* pp. 5-6.

recognized by our Constitution[38] and laws,[39] as well as on the respect and reverence that Filipino children generally accord to their parents.[40]

AAA's story cannot be trivialized as a mere fabrication or a tale allegedly weaved to take revenge for her father's strictness. Children are vulnerable.[41] Generally, they do not have the maturity to execute complex strategies impelled by evil motives. That they would go through such lengths—exposing themselves and their families to dishonor by publicly narrating how their father stripped them of their innocence[42]—only to get even for a trivial reason is, therefore, incredulous.

Testimonies of child victims may not always be the absolute truth. Nevertheless, the testimonies of child rape victims are generally entitled to full faith and credence. A girl who would willingly cause the examination of her private parts, allow the invasion of her privacy via an open trial, and recall the harrowing experiences she suffered in the hands of her own father must have been impelled by the desire to have the perpetrator caught and punished.[43] More significantly, she must have been motivated by the need to be physically and psychologically protected from her assailant.

After a child rape victim gives a credible testimony, the defense carries the burden of evidence to rebut it. Certainly, the defense that a child would wish to cause the arrest, imprisonment, and

---

[38] CONST., Art. XIV, Sec. 2(2) recognizes that parents have the "natural right . . . to rear their children."

[39] CIVIL CODE, Art. 311 states that "[c]hildren are obliged to obey their parents so long as they are under parental power, and to observe respect and reverence toward them always."

[40] *People v. Panique*, 375 Phil. 227, 238 (1999) [Per *J.* Mendoza, *En Banc*].

[41] *People v. Guillermo*, 550 Phil. 176, 188 (2007) [Per *J*. Garcia, *En Banc]*.

[42] *People v. Baun,* 584 Phil. 560, 574 (2008) [Per *J.* Azcuna, *En Banc*].

[43] *Id.*

embarrassment of her own father only because he was strict strains logic and common sense. It is a narrative that has no basis on any fact proven on record.

A child would not concoct a story of incest especially if it would result in losing one's father to prison.[44] In *People v. Baun*,[45] where the father was convicted for raping his 14-year old daughter four (4) times:

> No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. *It is against human nature for a girl to fabricate a story that would expose herself and her family to a lifetime of dishonor, especially where her charges would mean the death or the long-term imprisonment of her own father*.[46] (Emphasis supplied, citations omitted)

The Medical Certificate issued by Dr. Austria stating, "medical evaluation is suggestive of abuse," further supports the lower courts' finding that accused-appellant committed the incestuous acts charged against him.

As against these details and testimonies, all that accused-appellant has offered in defense are denials and alibis, defenses which jurisprudence has long considered as weak and unreliable.[47]

II

Accused-appellant committed two (2) counts of simple rape, not qualified rape.

The crime of qualified rape under Article 266-B(1)[48] of the Revised Penal Code consists of the twin circumstances of the

---

[44] *Id.*

[45] 584 Phil. 560 (2008) [Per *J.* Azcuna, *En Banc*].

[46] *Id*. at 574.

[47] *People v. Liwanag*, 415 Phil. 271, 295 (2001) [Per *J*. Ynares-Santiago, First Division].

[48] Article 266-B. *Penalties*–

victim's minority and her relationship to the perpetrator, both of which must concur and must be alleged in the information.[49] It is immaterial whether the relationship was proven during trial if that was not specifically pleaded for in the information.[50]

The Court of Appeals[51] and the Regional Trial Court[52] found that accused-appellant's relationship with AAA was not duly alleged in the informations. Thus, his relationship with the victim cannot qualify the crimes of rape. Ruling otherwise would deprive him of his constitutional right to be informed of the nature and cause of accusation against him.[53]

Simple rape is punishable by *reclusion perpetua*.[54] Even if the aggravating circumstances of minority and relationship were present, the appropriate penalty would still be *reclusion perpetua* under the law. Article 63 of the Revised Penal Code provides that "in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

In view of the depravity of the acts committed by accused-appellant against his daughter, we increase the amounts awarded to AAA, in accordance with jurisprudence:[55]

. . . .

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age *and* the offender is a parent. . . of the victim[.]

[49] *People v. Malana*, 646 Phil. 290, 310 (2010) [Per *J.* Perez, First Division].

[50] *People v. Ilao,* 357 Phil. 656, 671 (1998) [Per *J*. Regalado, *En Banc*].

[51] *Rollo*, p. 9.

[52] CA *Rollo*, pp. 38-40.

[53] *Andaya v. People*, 526 Phil. 480, 496 (2006) [Per *J.* Ynares-Santiago, First Division].

[54] See Article 266-B, Revised Penal Code.

[55] *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J*. Peralta, *En Banc*].

For each incident of rape through carnal knowledge, this Court modifies the award of civil indemnity from ₱50,000 to ₱100,000.00; moral damages from ₱50,000 to ₱100,000; and exemplary damages from ₱30,000 to ₱100,000.

WHEREFORE, finding accused-appellant Pablo Luad Armodia **GUILTY** beyond reasonable doubt, he is hereby **SENTENCED** as follows:

In Criminal Case No. DNO-2983 for simple rape – the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA the amount of **₱100,000.00** as civil indemnity, **₱100,000.00** as moral damages, and **₱100,000.00** as exemplary damages; and

In Criminal Case No. DNO-2998 for simple rape – the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA the amount of **₱100,000.00** as civil indemnity, **₱100,000.00** as moral damages, and **₱100,000.00** as exemplary damages.

All awards for damages are with interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.[56]

SO ORDERED.

Carpio (Chairperson) and *Peralta, JJ.,* concur.

Mendoza and *Martires, JJ.,* on official leave.

---

[56] *Ricalde v. People*, 751 Phil. 793, 816 (2015) [Per *J*. Leonen, Second Division].

THIRD DIVISION

[G.R. No. 210693. June 7, 2017]

EMERALD GARMENT MANUFACTURING CORPORATION, *petitioner, vs.* **THE H.D. LEE COMPANY, INC.**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE.—** In *Pryce Corporation v. China Banking Corporation*, the Court declared that: **[W]ell-settled is the principle that a decision that has acquired finality becomes immutable and unalterable** and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. The reason for this is that litigation must end and terminate sometime and somewhere, and **it is essential to an effective and efficient administration of justice** that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong the controversies.

2. **ID.; ID.; ID.; ID.; DOCTRINE OF *RES JUDICATA*; A FINAL JUDGMENT OR DECREE ON THE MERITS BY A COURT OF COMPETENT JURISDICTION IS CONCLUSIVE OF THE RIGHTS OF THE PARTIES OR THEIR PRIVIES IN ALL LATER SUITS ON ALL POINTS AND MATTERS DETERMINED IN THE FORMER SUIT.—** The Court also emphatically instructs anent the concept and application of *res judicata, viz.*: According to the doctrine of *res judicata*, “a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.” The elements for *res judicata* to apply are as follows: (a) the former judgment was final; (b) the court that rendered it had jurisdiction over the subject matter and the parties;

(c) the judgment was based on the merits; and (d) between the first and the second actions, there was an identity of parties, subject matters, and causes of action. *Res judicata* embraces two concepts: (1) bar by prior judgment and (2) conclusiveness of judgment. Bar by prior judgment exists "when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action." On the other hand, the concept of conclusiveness of judgment finds application "when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction." This principle only needs identity of parties and issues to apply.

APPEARANCES OF COUNSEL

Sioson Sioson & Associates for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is the Petition for Review on *Certiorari*[1] filed by Emerald Garment Manufacturing Corporation (Emerald) against The H.D. Lee Company, Inc. (H.D. Lee) to assail the Decision[2] and Resolution[3] of the Court of Appeals (CA), dated April 8, 2013 and January 6, 2014, respectively, in CA-G.R. SP No. 126253. The CA reversed the Decision[4] dated August 10, 2012, of the Intellectual Property Office's (IPO) then Director General Ricardo R. Blancaflor (DG Blancaflor) in Inter Partes

---

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

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr. concurring; *id*. at 17-34.

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

[4] *Id*. at 323-332.

Case No. 14-2007-00054, approving H.D. Lee's application for registration of the trademark "*LEE & OGIVE CURVE DESIGN*."

Antecedents

On December 21, 2001, H.D. Lee filed before the IPO an application for the registration of the trademark, "*LEE & OGIVE CURVE DESIGN*." H.D. Lee claimed that the said mark was first used in the Philippines on October 31, 1996. Relative thereto, Application No. 4-2201-009602, on outer clothing categorized under Class 25, which includes jeans, casual pants, trousers, slacks, shorts, jackets, vests, shirts, blouses, sweaters, tops, skirts, jumpers, caps, hats, socks, shoes, suspenders, belts and bandannas, was filed. Within three years from the filing of the application, H.D. Lee submitted to the IPO a Declaration of Actual Use of the mark.[5]

H.D. Lee's application was published in the Intellectual Property Philippines' Electronic Gazette for Trademarks, which was belatedly released on January 5, 2007.[6]

Emerald opposed H.D. Lee's application; hence, Inter Partes Case No. 14-2007-00054 arose. Emerald argued that the approval of the application will violate the exclusive use of its marks, "*DOUBLE REVERSIBLE WAVE LINE,*" and "*DOUBLE CURVE LINES*," which it has been using on a line of clothing apparel since October 1, 1973[7] and 1980, respectively. Further, Section 123.1(d)[8] of Republic Act No. 8293, otherwise known as the Intellectual Property Code (IPC), will likewise be breached

---

[5] *Id.* at 18.

[6] Please *see* the Decision dated February 27, 2009 of the IPO's Bureau of Legal Affairs, *id*. at 280.

[7] Please *see* CA Decision dated September 29, 2010 in CA-G.R. SP No. 105537; *rollo* (G.R. No. 195415), pp. 10-29, at 11.

[8] **Sec. 123**. Registrability. — 123.1. A mark cannot be registered if it:

x x x x x x x x x

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

because the "*LEE & OGIVE CURVE DESIGN*" is confusingly similar or identical to the "*DOUBLE CURVE LINES*" previously registered in Emerald's name.[9]

Refuting Emerald's opposition, H.D. Lee insisted that it is the owner and prior user of "*LEE & OGIVE CURVE DESIGN.*" H.D. Lee maintained that it initially used the said mark on February 18, 1946, and registered the same in the United States of America (USA) on April 10, 1984 under Registration No. 1,273,602. The mark has been commercially advertised and used all over the world as well.[10]

Decision of the IPO's Director of the Bureau of Legal Affairs

On February 27, 2009, the then Director of Bureau of Legal Affairs (BLA), Atty. Estrellita Beltran Abelardo (Atty. Abelardo), denied H.D. Lee's application. In its Decision,[11] Atty. Abelardo explained that H.D. Lee established neither its ownership of the mark "*LEE & OGIVE CURVE DESIGN*" nor its international reputation, *viz.*:

> The evidence on record disclose that on December 21, 2001, when [H.D. Lee] filed Application No. 4-2001-009602, [Emerald's] Application Serial No. 4-65682 for the re-registration of the mark "**DOUBLE CURVE LINES**" was already pending as it was filed as early as **September 6, 1988** x x x. In addition, long before December 21, 2001, [Emerald] adopted and has been using in commerce since January 8, 1980 the trademark "**DOUBLE CURVE LINES**" together with its other registered marks x x x up to the present x x x. Thus[,] pursuant to Section 2-A of Republic Act No.

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

x x x x x x x x x

[9] *Rollo*, p. 280.

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

[11] *Id.* at 280-292.

166,[12] as amended, the law then in force and effect, [Emerald] has become the owner of the mark "**DOUBLE CURVE LINES**" through continuous commercial use thereof. On May 5, 1981, said "**DOUBLE CURVE LINES**" was registered in favor of [Emerald] in the Supplemental Register under Registration No. 5513 x x x, and on May 31, 1982, in the Principal Register under Registration N[o]. 30810 x x x.

x x x x x x x x x

The evidence on record also discloses that on December 21, 2001, when [H.D. Lee] filed its opposed application, [Emerald's] Application Serial No. 70497 for the registration of the mark **DOUBLE REVERSIBLE WAVE LINE** was also pending, the same having been filed on January 8, 1990 x x x. In addition, long before December 21, 2001, [Emerald] adopted and has been using in commerce since October 1, 1973, the trademark "**DOUBLE REVERSIBLE WAVE LINE[,]**" together with its other registered marks x x x, up to the present x x x. Thus, pursuant to Section 2-A of Republic Act No. 166, as amended, the law then in force and effect, [Emerald] has become the owner of the mark "**DOUBLE REVERSIBLE WAVE LINE"** through continuous commercial use thereof.

x x x x x x x x x

The near resemblance or confusing similarity between the competing marks of the parties is further heightened by the fact that both marks are used on identical goods, particularly, on jeans and pants falling under Class 25.

x x x x x x x x x

Moreover, it is a fundamental principle in Philippine Trademark Law that only the owner of a trademark is entitled to register a mark in his[/her]/its name and that the actual use in commerce in the Philippines is a prerequisite to the acquisition of ownership over a trademark. The evidence on record clearly and convincingly shows (sic), that [Emerald] adopted and has been using the mark DOUBLE

---

[12] AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES. Approved on June 20, 1947.

REVERSIBLE WAVE LINE since **October 1, 1973** x x x and the mark DOUBLE CURVE LINES since **January 8, 1980** x x x. Although [H.D. Lee] claimed in its Answer that it first used the LEE & OGIVE CURVE DESIGNB [sic] trademark in the [USA] on or about February 18, 1946 x x x, it did not present any evidence to prove such claim of first use. The evidence presented by [H.D. Lee] shows that it entered into a License Agreement with Authentic American Apparel, Inc., only on **January 1, 1996** x x x and its yearly sales reports started only from **October 1996** x x x.

[H.D. Lee] also claimed in its Answer that it registered its LEE & OGIVE CURVE DESIGN mark in the [USA] on April 10, 1984 under Registration No. 1,273,602 x x x. [H.D. Lee], however, failed to submit a duly certified and authenticated copy of its certificate of registration for Registration No. 1,273,602. In fact, [H.D. Lee] did not submit any certified and authenticated certificate of registration of its mark LEE & OGIVE CURVE DESIGN issued anywhere else. x x x.

x x x x x x x x x

Examination of the documentary evidence submitted by [H.D. Lee] will show that it did not submit any certified and authenticated certificate of registration of its mark anywhere else in the world; likewise, it did not submit any proof of use of its mark outside of the Philippines, while its use in the Philippines appears to have started only in October 1996 x x x, twenty[-]three (23) years after [Emerald] started using its **DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)** on **October 1, 1973** x x x. [H.D. Lee] did not submit any proof of having promoted and advertised its mark outside the Philippines, while in the Philippines[,] x x x it started preparing its yearly advertising expenditures only on January 2000 x x x. None of its advertising clippings submitted in evidence appeared before 2003 x x x.[13] (Citations omitted, underlining ours and emphasis in the original)

Decision of the IPO's DG

On appeal, DG Blancaflor rendered on August 10, 2012 a Decision[14] reversing the findings of Atty. Abelardo based on the grounds cited below:

[13] *Rollo*, pp. 288-292.

[14] *Id*. at 323-332.

[H.D. Lee] has established by substantial evidence that it is the owner of LEE & OGIVE CURVE DESIGN. It has adduced evidence showing that it has registered and/or applied in 115 countries around the world the mark LEE & OGIVE CURVE DESIGN and that it secured a certificate of registration for this mark in the [USA] on April 1984. [H.D. Lee] also submitted proof of its advertising activities and sales invoices.

That [Emerald] has trademark applications and/or registrations in the Philippines on marks similar to [H.D. Lee] and which were filed and/or registered earlier than [H.D. Lee's] trademark application is not sufficient to overcome the pieces of evidence proving [H.D. Lee's] ownership of LEE & OGIVE CURVE DESIGN. It is not the application or the registration that confers ownership of a mark but it is the ownership thereof that confers the right to registration.

Moreover, [H.D. Lee] has shown that LEE & OGIVE CURVE DESIGN is a well-known mark. x x x

x x x x x x x x x

[H.D. Lee's] pieces of evidence satisfy a combination of the criteria x x x such as the duration, extent and geographical area of any use of the mark, the extent to which the mark has been registered in the world, and the extent to which the mark has been used in the world. [H.D. Lee] cited the over 100 countries where it has registered and/ or applied for the registration of LEE & OGIVE CURVE DESIGN. The affidavits of Helen L. Winslow and Wilfred T. Siy explained the long, continuous and global use of [H.D. Lee's] mark. These pieces of evidence are sufficient enough to consider [H.D. Lee's] mark as well-known internationally and in the Philippines.

Furthermore, there is nothing in the records which explained how [Emerald] came to use a highly distinctive sign such as a "Back Pocket Design" or the "Double Curve Lines" which are identical or confusingly similar to the well-known mark LEE & OGIVE CURVE DESIGN. The absence of any explanation on how [Emerald] conceived these marks gives credence to the position that [H.D. Lee] is the owner and creator of LEE & OGIVE CURVE DESIGN and is, therefore, entitled to the registration of this mark.[15] (Citations omitted and underlining ours)

---

[15] *Id*. at 331-332.

Ruling of the CA

Undaunted, Emerald filed a petition for review[16] under Rule 43 of the Rules of Court, which the CA denied in the herein assailed decision.[17]

According to the CA, H.D. Lee substantially complied with the procedural requirements in filing before the IPO a petition for registration of the mark "*LEE & OGIVE CURVE DESIGN*."

Further, the CA considered the following factors in H.D. Lee's favor: (1) while the mark "*LEE & OGIVE CURVE DESIGN*" is registered only in India and Greece, with pending application in the Philippines, the "*OGIVE CURVE DESIGN*" is registered and/or applied for registration in about 100 countries;[18] (2) the inconsistent dates, to wit, 1946 and 1949, which H.D. Lee claimed as the year when it initially used the mark "*LEE & OGIVE CURVE DESIGN*," will not affect its position as being the first and prior user thereof for at least 20 years before Emerald utilized the marks "*DOUBLE REVERSIBLE WAVE LINE*" and "*DOUBLE CURVE LINES*" in 1973 and 1980, respectively;[19] (3) registration in the Principal Register is limited to the actual owner of the trademark, hence, the Certificate of Registration issued to Emerald by the IPO on May 31, 1982 covering the mark "*DOUBLE CURVE LINES*," which pre-dated the registration in the USA of the mark "*OGIVE CURVE DESIGN*" on April 10, 1984, merely gave rise to a *prima facie* but rebuttable proof of registrant's ownership of a mark;[20] (4) even if the mark "*LEE & OGIVE CURVE DESIGN*" is not locally registered, it is entitled to protection as a well-known brand under the IPC and international treaties entered into by the Philippines;[21] (5) H.D. Lee cannot be blamed regarding

---

[16] *Id*. at 333-388.

[17] *Id*. at 17-34.

[18] *Id*. at 25.

[19] *Id.* at 30.

[20] *Id*. at 30-31.

[21] *Id*. at 31.

the confusing similarity between the marks "*DOUBLE REVERSIBLE WAVE LINE*" and "*OGIVE CURVE DESIGN*" considering that it has been using the latter design for at least two decades earlier than Emerald;[22] and (6) it is of judicial notice that in the 1950s movie, "*Rebel Without a Cause*," James Dean wore H.D. Lee's jeans with the "*OGIVE CURVE DESIGN*" sewn in the back pockets.[23]

Emerald moved for reconsideration, pointing out that in G.R. No. 195415,[24] the Court issued Resolutions, dated November 28, 2012[25] and January 28, 2013,[26] which denied with finality H.D. Lee's opposition against Emerald's registration of the mark "*DOUBLE REVERSIBLE WAVE LINE.*" In the Resolution dated November 28, 2012, the Court's reasons were unequivocal, *viz.*:

> First, the evidence proferred by [Emerald] sufficiently proves that it has been actually using the mark "**DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)**" since October 1973. The sales invoices established actual commercial use of the mark more than two months prior to [Emerald's] application for its registration in 1990.
>
> Second, [H.D. Lee] was not able to prove that the mark "**OGIVE CURVE DEVICE**" was well known internationally and in the Philippines at the time of the filing of [Emerald's] application for registration. For a trademark to be protected, the same must be "well known" in the country where protection is sought. Such is not the case here, since the sale of garments in the Philippines bearing [H.D. Lee's] mark "**OGIVE CURVE DEVICE**" began only in 1996. Prior to said date, there was no substantial evidence proving commercial use of goods bearing the mark in the Philippines.[27]

In the herein assailed Resolution[28] dated January 6, 2014, the CA denied Emerald's motion for reconsideration. According

---

[22] *Id*. at 32.

[23] *Id*.

[24] *H.D. Lee v. Emerald.*

[25] *Rollo*, pp. 198-199.

[26] *Id*. at 436-437.

[27] *Id*. at 198.

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

to the CA, it was belatedly notified of the Court's Resolutions dated November 28, 2012 and January 28, 2013 in G.R. No. 195415 only on April 10, 2013.[29] Further, even if the aforementioned resolutions were promptly brought to the CA's attention, the rule on "*conclusiveness of judgment*" still finds no application. In G.R. No. 195415, the issue was the non-registrability of Emerald's mark "*DOUBLE REVERSIBLE WAVE LINE*" based on the opposer H.D. Lee's claim that "*OGIVE CURVE DESIGN*" is internationally well-known and legally protected by the Paris Convention and other pertinent trademark laws. The issues, which were resolved, centered on the goodwill and prior use of Emerald's mark in the Philippines.[30] On the other hand, in CA-G.R. SP No. 12625, from which the petition now before the Court arose, the issue was the non-registrability of H.D. Lee's mark "*LEE & OGIVE CURVE DESIGN*" for being confusingly similar to the marks "*DOUBLE REVERSIBLE WAVE LINE" and "DOUBLE CURVE LINES,*" which are registered in Emerald's name. The focal issue is "*LEE & OGIVE CURVE DESIGN*'s" alleged international reputation, hence, the dispensability of its prior use in the Philippines.[31]

The Proceedings Before the Court

In the instant petition for review on *certiorari*,[32] Emerald argues that the herein assailed decision and resolution are in conflict with the final and executory dispositions rendered in G.R. No. 195415. The Court already upheld the registration of Emerald's mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*," and an Entry of Judgment[33] was thereafter recorded on March 20, 2013.[34] Further, Emerald's prior application for the registration of its mark "*DOUBLE CURVE*

---

[29] *Id*. at 37.

[30] *Id*. at 38.

[31] *Id*. at 38-39.

[32] *Id*. at 43-107.

[33] *Id*. at 202-203.

[34] *Id*. at 60.

LINES"[35] had likewise been resolved with finality by the IPO DG on June 5, 2008, and the corresponding Entry of Judgment was recorded on October 21, 2008.[36] Hence, the principle of conclusiveness of judgment under Rule 39, Section 47(b) and (c)[37] of the Rules of Court applies. The issues of confusing similarity between the marks involved herein and their prior use had been determined with finality by the Court and the IPO DG. The same issues can no longer be raised before the CA in CA-G.R. SP No. 126253 from which the instant petition arose.

Repetitive as it may be, in G.R. No. 195415, the Court had adjudged that Emerald had prior actual use in the Philippines of the mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design)*" since October of 1973. In Inter Partes Case No. 3498, the IPO DG had ruled that Emerald started using the mark "*DOUBLE CURVE LINES*" on January 8, 1980. On the other hand, H.D. Lee initially sold in the Philippines garments with the mark "*OGIVE CURVE DEVICE*" only in 1996, and filed an application for the said mark in the USA on November 9, 1981.[38]

---

[35] Inter Partes Case No. 3498 before the IPO.

[36] *Rollo*, pp. 54, 79.

[37] **Sec. 47.** *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been missed in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[38] *Rollo*, pp. 72-75.

Emerald likewise emphasizes the following: (1) on January 19, 1990, H.D Lee applied for the registration of the mark "*OGIVE CURVE DESIGN*," but the same was abandoned with finality as indicated in the IPO's website;[39] (2) contrary to H.D. Lee's representations, the mark "*LEE & OGIVE CURVE DESIGN*" is not registered in the USA, its home country, as USA Registration No. 1,273,602 issued on April 10, 1984 merely covers the mark "*OGIVE CURVE DESIGN*";[40] (3) the mark "*LEE & OGIVE CURVE DESIGN"* was only registered in Greece and India in 1996, while in other countries, the pending applications for registration pertain to "*OGIVE CURVE DESIGN*";[41] and (4) in the Declaration of Actual Use filed before the IPO on May 13, 2002, H.D. Lee indicated that it first used the mark "*LEE & OGIVE CURVE DESIGN*" in the Philippines only on October 31, 1996.[42]

In the Resolution[43] dated March 24, 2014, the Court initially denied the instant petition for failure to sufficiently show any reversible error committed by the CA.

Emerald moved for reconsideration[44] primarily anchored on the argument that the non-registrability of H.D. Lee's mark "*LEE & OGIVE CURVE DESIGN"* is a foregone conclusion in view of the finality of the Resolution issued by the Court relative to the mark "*DOUBLE REVERSIBLE WAVE LINE (Back Pocket Design*)" in G.R. No. 195415.

It was further argued that "*OGIVE CURVE DESIGN*," being the dominant feature of the mark "*LEE & OGIVE CURVE DESIGN*," can no longer be registered by H.D. Lee due to its confusing similarity to Emerald's "*DOUBLE REVERSIBLE*

---

[39] *Id*. at 61, 144.

[40] *Id*. at 91.

[41] *Id*. at 90.

[42] *Id*. at 92.

[43] *Id*. at 562.

[44] *Id*. at 563-580.

WAVE LINE (Back Pocket Design)" and "*DOUBLE CURVE LINES*." Section 123.1(d) of the IPC precludes registration of a mark identical with another with an earlier filing or priority date.[45]

Emerald concluded that the principle of conclusiveness of judgment applies. The Court's disposition in G.R. No. 195415 and the IPO's ruling in Inter Partes Case No. 3498, both of which had become final and executory, proscribe H.D. Lee from further pursuing the registration of the mark "*LEE & OGIVE CURVE DESIGN*."[46]

In the Comment[47] on the Motion for Reconsideration, H.D. Lee averred that Emerald merely reiterated the arguments raised in the petition, which had already been judiciously resolved by the Court.[48] Further, there exists no identity of issues raised in G.R. No. 195415, on one hand, and in the instant petition, on the other. In G.R. No. 195415, the issue was the non-registrability of the mark "*DOUBLE REVERSIBLE WAVE LINE*" in view of the alleged international use and well-renowned character of the mark "*OGIVE CURVE DESIGN.*" In the instant petition, the issue is the non-registrability of the mark "*LEE & OGIVE CURVE DESIGN*," which has confusing similarity with the already registered marks "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE*."[49]

In its Reply,[50] Emerald insisted that the instant petition still involves the issue of the confusing similarity between "*OGIVE CURVE DESIGN*," on one hand, and "*DOUBLE REVERSIBLE WAVE LINE*" and "*DOUBLE CURVE LINES*," on the other. While H.D. Lee claims that the issue herein is the registrability

---

[45] *Id*. at 571-572.

[46] *Id*. at 572-575.

[47] *Id*. at 802-810.

[48] *Id*. at 803.

[49] *Id*. at 805.

[50] *Id*. at 817-827.

of "*LEE & OGIVE CURVE DESIGN*," the dominant feature of the mark sought to be registered remains to be the "*OGIVE CURVE DESIGN*." The latter had been among the foci of G.R. No. 195415. Moreover, "*LEE & OGIVE CURVE DESIGN*" is a composite mark, the parts of which can be registered separately. H.D. Lee already registered "*LEE*" in its name, but it abandoned the application to register "*OGIVE CURVE DESIGN*" which was filed before the IPO on January 19, 1990.[51] Emerald also stressed anew that on April 4, 2013, before the promulgation of the herein assailed Decision on April 8, 2013, the CA had been furnished with copies of the Court's Resolutions dated November 28, 2013 and January 28, 2014 in G.R. No. 195415.[52]

On November 28, 2016, the Court issued a Resolution[53] reinstating the instant petition to afford the contending parties ample opportunities to argue their respective stances.

In its Comment[54] on the instant petition, H.D. Lee once again stresses the lack of identity between the facts and issues presented herein with those resolved in G.R. No. 195415 and Inter Partes Case No. 3498. H.D. Lee posits that G.R. No. 195415 and Inter Partes Case No. 3498 dealt with the registrability of the mark "*OGIVE CURVE DESIGN*," which is distinct and separate from "*LEE & OGIVE CURVE DEVICE*," subject of the instant petition.[55]

Further, even granting for argument's sake that by reason of the similarities of the marks involved, the issues are indeed identical, prior decisions cannot bar a contrary disposition from being subsequently rendered as the result would be the preclusion of any application for registration of variants of a mark.[56]

---

[51] *Id*. at 820.

[52] *Id*. at 822.

[53] *Id*. at 841-844.

[54] *Id*. at 847-855.

[55] *Id*. at 849.

[56] *Id*. at 850.

By way of a Reply[57] to H.D. Lee's Comment, Emerald reiterates its contentions already raised in the instant petition.

Ruling of the Court

The instant petition is impressed with merit.

The present controversy arose from H.D. Lee's application for the registration of the mark "*LEE & OGIVE CURVE DESIGN*," which was filed in 2001, **pending** the final resolution of Emerald's separate applications for the registration of the marks "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE* (*Back Pocket Design*)."

In 2009, then BLA Director Atty. Abelardo denied H.D. Lee's application for registration of "*OGIVE CURVE DESIGN*" by reason of opposer Emerald's proven **prior** commercial use of "*DOUBLE REVERSIBLE WAVE LINE.*" Back then, Atty. Abelardo already took note of the pendency of Emerald's two separate applications for the registration of "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE.*"[58]

Despite the foregoing, the IPO's DG and CA proceeded to resolve the case **unmindful** of the pending applications for the registration of "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE*" previously filed by Emerald.

Meanwhile, in G.R. No. 195415, the Court, *via* the Resolutions dated November 28, 2012 and January 28, 2013, made the following findings with finality: (1) Emerald has been using the mark "*DOUBLE REVERSIBLE WAVE LINE* (*Back Pocket Design*)" since October 1973, with sales invoices proving actual commercial use of the mark more than two months before the application for its registration in 1990; (2) H.D. Lee's sale of its garments in the Philippines only began in 1996; and (3) H.D. Lee failed to prove that the mark "*OGIVE CURVE DEVICE*" was well-known locally and internationally at the time Emerald filed its application for the registration of the mark "*DOUBLE REVERSIBLE WAVE LINE* (*Back Pocket Design*)."[59]

---

[57] *Id*. at 859-873.

[58] *Id*. at 288-289.

[59] *Id*. at 198-199; 436-437.

On the other hand, Emerald's application for the registration of its mark "*DOUBLE CURVE LINES*" had likewise been resolved with finality by the IPO DG on June 5, 2008, and the corresponding Entry of Judgment was recorded on October 21, 2008.[60]

In *Pryce Corporation v. China Banking Corporation*,[61] the Court declared that:

[W]ell–settled is the principle that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.

The reason for this is that litigation must end and terminate sometime and somewhere, and **it is essential to an effective and efficient administration of justice** that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong the controversies.[62]

The Court also emphatically instructs anent the concept and application of *res judicata*, *viz.*:

According to the doctrine of *res judicata*, "a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit."

The elements for *res judicata* to apply are as follows: (a) the former judgment was final; (b) the court that rendered it had jurisdiction over the subject matter and the parties; (c) the judgment was based on the merits; and (d) between the first and the second actions, there was an identity of parties, subject matters, and causes of action.

Res judicata embraces two concepts: (1) bar by prior judgment and (2) conclusiveness of judgment.

---

[60] *Id.* at 54.

[61] 727 Phil. 1 (2014).

[62] *Id*. at 15, citing *Siy v. National Labor Relations Commission*, 505 Phil. 265, 274 (2005).

Bar by prior judgment exists "when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action."

On the other hand, the concept of conclusiveness of judgment finds application "when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction." This principle only needs identity of parties and issues to apply.[63] (Citations omitted)

H.D. Lee argues that the principle of conclusiveness of judgment does not apply since no identity of issue exists between the instant petition, on one hand, and G.R. No. 195415, on the other. The Court finds the foregoing **untenable** as the issues all point to the **registrability of the confusingly similar marks** "*DOUBLE CURVE LINES*," "*DOUBLE REVERSIBLE WAVE LINE*," and "*OGIVE CURVE DESIGN.*" Further, H.D. Lee's claim that the instant petition involves the mark "*LEE & OGIVE CURVE DESIGN*" and not "*OGIVE CURVE DESIGN*" is **specious** and a clear attempt to engage into hair-splitting distinctions. A thorough examination of the pleadings submitted by H.D. Lee itself shows that indeed, the focus is the "*OGIVE CURVE DESIGN*," which remains to be the dominant feature of the mark sought to be registered.

The Court needs to stress that in G.R. No. 195415 and Inter Partes Case No. 3498 before the IPO, Emerald had already **established with finality its rights** over the registration of the marks "*DOUBLE CURVE LINES*" and "*DOUBLE REVERSIBLE WAVE LINE*" as against H.D. Lee's "*OGIVE CURVE DESIGN*."

As a final note, the courts are reminded to be *constantly vigilant in extending their judicial gaze to cases related to the matters submitted for their resolution as to ensure against judicial confusion and any seeming conflict in the judiciary's decisions*.[64]

---

[63] *Pryce Corporation v. China Banking Corporation*; *id*. at 11-12.

[64] *Id.* at 27.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and Resolution, of the Court of Appeals dated April 8, 2013 and January 6, 2014, respectively, in CA-G.R. SP No. 126253, are **REVERSED** and **SET ASIDE**. The H.D. Lee Company, Inc.'s application for the registration of the mark "*LEE & OGIVE CURVE DESIGN*" is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 211108. June 7, 2017]

ALEJANDRO D.C. ROQUE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; SECTION 74 ON THE LIABILITY FOR DAMAGES OF ANY OFFICER OR AGENT OF THE CORPORATION FOR REFUSING TO ALLOW ANY MEMBER OF THE CORPORATION TO EXAMINE AND COPY EXCERPTS FROM ITS RECORDS OR MINUTES; REQUISITES FOR VIOLATION THEREOF.—** Section 74 of the Corporation Code provides for the liability for damages of any officer or agent of the corporation for refusing to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes. Section 144 of the same Code further provides for other applicable penalties in case of violation of any provision of the Corporation Code. Hence, to prove any violation under the aforementioned provisions, it is

necessary that: (1) a director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporations records or minutes; (2) any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; (3) if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and (4) where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

2. **ID.; CORPORATION LAW; THE REVOCATION OF A CORPORATION'S REGISTRATION DOES NOT AUTOMATICALLY STRIP OFF A MEMBER OF HIS RIGHT TO EXAMINE THE RECORDS.—** [T]he revocation of a corporation's Certificate of Registration does not automatically warrant the extinction of the corporation itself such that its rights and liabilities are likewise altogether extinguished. In the case of *Clemente v. Court of Appeals*, the Court explained that the termination of the life of a juridical entity does not, by itself, cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors. Thus, the revocation of BMTODA's registration does not automatically strip off Ongjoco of his right to examine pertinent documents and records relating to such association.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on Certiorari under Rule 45 filed by petitioner Alejandro Roque (Roque).

Roque assails the Decision[1] dated August 31, 2012 and the Resolution[2] dated January 22, 2014 of the Court of Appeals[3] (CA), which set aside and annulled the Order[4] dated November 12, 2008 of the Regional Trial Court (RTC),[5] Third Judicial Region, Branch 11, Malolos City, Bulacan in Criminal Case No. 1011-M- 2005. Said Order granted the motion for leave of court to file demurrer to evidence filed by Rosalyn Singson (Singson), herein petitioner's co-accused.

On November 17, 1993, Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA) became a corporation duly registered with the Securities and Exchange Commission (SEC).

Sometime in August 2003, Oscar Ongjoco (Ongjoco), a member of BMTODA, learned that BMTODA's funds were missing. In a letter, Ongjoco requested copies of the Association's documents pursuant to his right to examine records under Section 74 of the Corporation Code of the Philippines (Corporation Code). However, Singson, the Secretary of BMTODA, denied his request.

Ongjoco also learned that the incumbent officers were holding office for three years already, in violation of the one-year period

---

[1] *Rollo* at pp. 34-46.

[2] *Id.* at 48-49.

[3] Penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr.

[4] *Rollo*, pp. 65-66.

[5] Promulgated by Judge Basilio R. Gabo, Jr.

provided for in BMTODA's by-laws. He then requested from Roque, the President of BMTODA, a copy of the list of its members with the corresponding franchise numbers of their respective tricycle fees and the franchise fees paid by each member, but Roque denied Ongjoco's request.

Ongjoco filed an Affidavit-Complaint against Roque and Singson for violation of Section 74 in relation to Section 144 of the Corporation Code because of their refusal to furnish him copies of records pertaining to BMTODA.

The Office of the City Prosecutor of San Jose Del Monte, Bulacan found probable cause to indict Roque and Singson. Hence, an Information was filed against them, which reads:

> That sometime in December 2004, in San Jose Del Monte City, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Alejandro D.C. Roque and Rosalyn G. Singson, being the President and Secretary, respectively, of Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA), conspiring, confederating, and mutually helping each other, did then and there willfully, unlawfully, and feloniously fail and neglect to keep in their official record of all business transactions, minutes of all meetings or stockholders or members, or of the board of directors or trustees and refused to allow stockholders, members, directors or trustees to examine and copy excerpt from the records or minutes of the association after demand in writing.[6]

After the prosecution rested its case, Roque and Singson filed a Motion for Leave of Court to File Demurrer to Evidence with Motion to Dismiss by way of Demurrer to Evidence. The prosecution failed to file any comment thereon.

In an Order[7] dated November 12, 2008, the RTC granted the motion and gave due course to Roque and Singson's demurrer to evidence. The RTC ruled that said association failed to prove its existence as a corporation. Hence, a violation under the Corporation Code cannot be made applicable against its officers. The *fallo* thereof reads:

---

[6] CA Decision, *Rollo*, p. 37.

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

Accordingly, this demurrer is GIVEN DUE COURSE and the instant case is hereby DISMISSED.

SO ORDERED.[8]

On appeal, the CA reversed and set aside the Order dated November 12, 2008 of the RTC. The CA ruled that BMTODA is a duly registered corporation. The CA stated that a Petition to Lift Order of Revocation and the SEC Order Lifting the Revocation were presented in evidence; and that logic dictates that such documentary evidence presupposes a duly registered and existing entity. The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. Accordingly, the court a quo's Order dated 12 November 2008 is hereby ANNULLED and SET ASIDE.

This case is hereby remanded to the court a quo for the presentation of defense evidence.

SO ORDERED.[9]

Hence, Roque, thru his counsel, filed the present Petition.

Petitioner contends that there is want of evidence to prove that BMTODA is a corporation duly established and organized under the Corporation Code; thus, he cannot be prosecuted under the penal provisions of the said code.

The appeal lacks merit.

Section 74[10] of the Corporation Code provides for the liability for damages of any officer or agent of the corporation for refusing

---

[8] *Id*. at 66.

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

[10] Section 74. **Books to be kept; stock transfer agent.—**

x x x x x x x x x

Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal

to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes. Section 144 of the same Code further provides for other applicable penalties in case of violation of any provision of the Corporation Code.

Hence, to prove any violation under the aforementioned provisions, it is necessary that: (1) a director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporations records or minutes; (2) any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; (3) if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and (4) where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[11]

Clearly, Ongjoco, as a member of BMTODA, had a right to examine documents and records pertaining to said association. To recall, Ongjoco made a prior demand in writing for copy of

---

is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

x x x x x x x x x

[11] *Flordeliza v. Ang,* G.R. No. 178511, December 4, 2008.

pertinent records of BMTODA from Roque and Singson. Ongjoco sent his letters dated December 13, 2003[12] and August 29, 2004[13] to Roque and Singson, respectively. However, both of them refused to furnish Ongjoco copies of such pertinent records.

Roque argues that when the letters were received by him and Singson, BMTODA's registration was already revoked. Hence, BMTODA ceased to exist as a corporation.

We are not persuaded.

While it appears that the registration of BMTODA as a corporation with the SEC was revoked on September 30, 2003, the letter-request of Ongjoco to Singson, which was dated while BMTODA's registration was revoked, was actually received by Singson *after* the revocation was lifted. In a Letter dated October 11, 2004, the General Counsel of the SEC made it clear that the SEC lifted the revocation of BMTODA's registration on August 30, 2004. As the CA correctly observed, the letter-request was received by Singson on September 23, 2004 when BMTODA had regained its active status.[14]

In any case, the revocation of a corporation's Certificate of Registration does not automatically warrant the extinction of the corporation itself such that its rights and liabilities are likewise altogether extinguished. In the case of *Clemente v. Court of Appeals,*[15] the Court explained that the termination of the life of a juridical entity does not, by itself, cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors.

Thus, the revocation of BMTODA's registration does not automatically strip off Ongjoco of his right to examine pertinent documents and records relating to such association.

---

[12] *Rollo*, p. 93.

[13] *Id*. at 94.

[14] CA Decision, *rollo*, *id*. at 43.

[15] G.R. No. 82407, March 27, 1995.

Also, since Roque admitted the revocation of BMTODA's registration,[16] he cannot come forward and disclaim BMTODA's registration with the SEC as a corporation. It is logical to presume that a registration precedes the revocation thereof; as any registration cannot be revoked without its valid existence.

Moreover, Roque also tries to exculpate himself from liability by claiming Singson's denial of the request of Ongjoco as Singson's personal act.

We do not agree.

A reading of this present Petition reveals that Roque admitted[17] his denial of Ongjoco's request, *i.e.*, to furnish him a copy of BMTODA's list of its members with the corresponding franchise body numbers of their respective tricycles and franchise fees paid by each member. Also, what was requested from Singson pertains to an entirely different document. Thus, Singson's denial is immaterial, and does not detract from Roque's denial of Ongjoco's request to access the above-mentioned document. For his individual and separate act, Roque should be held accountable. Hence, Roque's denial is unquestionably considered as a violation under the Corporation Code.

WHEREFORE, the instant petition is **DENIED**. The Decision dated August 31, 2012 and Resolution dated January 22, 2014 of the Court of Appeals are **AFFIRMED *in toto***.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Caguioa,*[*] *JJ.*, concur.

---

[16] *Rollo*, pp. 22-23.

[17] *Id*. at 13.

[*] Designated as additional member as per Raffle dated February 27, 2017.

THIRD DIVISION

[G.R. No. 212934. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BLAS GAA *y* RODRIGUEZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; STATUTORY RAPE; COMMITTED BY SEXUAL INTERCOURSE WITH A WOMAN BELOW 12 YEARS OF AGE REGARDLESS OF HER CONSENT, OR THE LACK OF IT, TO THE SEXUAL ACT.—** Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious

shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which, are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.

3. **CRIMINAL LAW; RAPE; ANY PENETRATION OF THE FEMALE ORGAN BY THE MALE ORGAN, HOWEVER SLIGHT, IS SUFFICIENT.—** It is well-settled that full penetration of the female genital organ is not indispensable. It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Any penetration of the female organ by the male organ, however slight, is sufficient. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape.

4. **ID.; QUALIFIED STATUTORY RAPE; THE MINORITY OF THE VICTIM AND HER RELATIONSHIP WITH THE ACCUSED WERE BOTH ALLEGED IN THE INFORMATIONS AND PROVEN DURING TRIAL; PROPER PENALTY AND DAMAGES.—** Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the two Informations and that the same were sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of two counts of Qualified Statutory Rape. Thus, the CA is correct in imposing upon the accused-appellant the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty, pursuant to Section 3 of Republic Act No. 9346 (RA 9346), entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines." However, We modify the amounts awarded to AAA in view of recent jurisprudence imposing a minimum amount of Php 100,000 as civil indemnity; Php 100,000 as moral damages; and Php 100,000 as exemplary damages in cases where the proper penalty for the crime committed by the accused is death but where it cannot be imposed because of the enactment of RA 9346. Thus, We increase the award of civil indemnity from Php 75,000 to Php 100,000; moral damages

from Php 75,000 to Php 100,0000; and exemplary damages from Php 30,000 to Php 100,000. Further, a legal interest of 6% per annum will be imposed on the total amount of damages awarded to AAA counted from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J*.:

Accused-appellant Blas Gaa y Rodriguez questions the Decision[1] dated February 13, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04906, which affirmed the Decision[2] dated February 10, 2011 rendered by the Regional Trial Court (RTC), Branch 62 of Gumaca, Quezon in Criminal Case Nos. 7972-G and 7973-G, finding accused-appellant guilty of two counts of Qualified Rape.

Accused-appellant was charged with two counts of Qualified Statutory Rape under separate Informations, to wit:

Criminal Case No. 7972-G

That on or about 8:00 o'clock in the morning of the 4th day of April 2001 at Barangay XXX,[3] Municipality of Atimonan, Province of Quezon, Philippines and within the jurisdiction of this Honorable

---

[1] Penned by Associate Justice Ramon A. Cruz, concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza, *Rollo,* pp. 2-16.

[2] CA *rollo*, pp. 53-57.

[3] The specific barangay where the crime was committed is omitted pursuant to A.M. No. 12-7-15-SC "*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names.*"

Court, the above-named accused, with force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one AAA,[4] a minor, 9 years old, 5 months and 1 day old, against her will.

That the accused is the legitimate father of the victim AAA.

Contrary to Law.[5]

<u>Criminal Case No. 7973-G</u>

That on or about the month of March 2003 at Barangay XXX, Municipality of Atimonan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one AAA, a minor, 11 years old, against her will.

That the accused is the legitimate father of the victim AAA.

Contrary to Law.[6]

Upon arraignment, the accused-appellant pleaded not guilty to the charges. Trial ensued.

The pertinent facts of the case, as summarized by the CA, are as follows:

<u>For the first count of qualified statutory rape, in Criminal Case No. 7972-G:</u>

On or about 8:00 o'clock in the morning of April 4, 2001, 'AAA' was at their house located at Brgy. XXX, Atimonan, Quezon, together with his father, Blas Gaa. AAA's mother was working in Mandaluyong

---

[4] The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "*Special Protection of Children against Abuse, Exploitation and Discrimination Act*" and A.M. No. 12-7-15-SC entitled "*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names.*"

[5] CA *rollo*, p. 40.

[6] *Id*.

City while her younger brother was ordered by Blas Gaa to fetch water outside their house. Alone with Blas Gaa, AAA was asked by him to remove her shorts and panty. Blas Gaa also removed his own shorts and brief and placed himself on top of AAA. He tried to insert his penis to AAA's vagina for several times. AAA felt pain because of the poking act of her father but was able to evade his penis. Blas Gaa did not succeed in penetrating AAA's vagina but his penis was in the 'bokana' (sic) of AAA's vagina. Blas Gaa also inserted his fingers inside AAA's vagina and she described this act to be "kinali-kalikot" and "sinundut-sundot". While Blas Gaa was doing this, he told AAA that she should behave and should not stop him from what he was doing. She did not report to anybody the April 4, 2001 incident until April 7, 2003.

After April 4, 2001, AAA repeatedly had the same experience from Blas Gaa. She said that the incident happened many times.

The last incident happened sometime in March 2003.

For the second count of qualified statutory rape, in Criminal Case No. 7973-G:

Sometime in March 2003, AAA was in their bedroom when Blas Gaa threatened to kill her with a bolo. Just like the 2001 incident, Blas Gaa removed his brief and shorts and AAA was able to see his penis. He forced his penis against her vagina while she was in a lying position. She tried to evade him but he was threatening her with his bolo. She is mad at him for what he did to her and cannot forgive him. She first reported the incident to her mother on April 6, 2003 because her younger brother saw Blas Gaa on top of her. He was the one who first told their mother about the incident and AAA's mother asked her if it were (sic) true so she told her it was true. AAA's mother got mad and filed the cases against Blas Gaa.

x x x x x x x x x

On the part of the defense, Blas Gaa testified that on April 4, 2001, between 7-10 a.m., he was in the surroundings of his house cutting grass. He only returned to the house to drink water. He denied raping AAA, his daughter, and threatening to kill her. He also denied the incident which happened sometime in March 2003. He said that the reason that AAA accused him of rape is because his wife was having an affair with another man. He suggested to his wife to have

AAA medically examined and that the medical certificate shows a negative result for laceration, spematozoa, among others.[7]

On February 10, 2011, the RTC found accused-appellant guilty beyond reasonable doubt of the charges, *viz*:

WHEREFORE, Accused Blas Gaa y Rodriguez is found GUILTY beyond reasonable doubt of two counts of qualified statutory rape and he is sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole in each of the two counts of rape. Accused is ordered to pay the victim AAA in each of the two counts ₱50,000.00 moral damages, ₱50,000.00 as exemplary damages and another ₱50,000.00 as civil indemnity:

Costs against the accused.

SO ORDERED.[8]

On appeal, the CA affirmed with modification the ruling of the RTC, as follows:

WHEREFORE, premises considered, the RTC Decision dated February 10, 2011 is AFFIRMED, but with MODIFICATION as to monetary awards. The RTC Decision should read, as follows:

x x x x x x x x x

"WHEREFORE, Accused Blas Gaa y Rodriguez is found GUILTY beyond reasonable doubt of two counts of qualified statutory rape and he is sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole in each of the two counts of rape. Accused is ordered to pay the victim AAA in each of the two counts ₱75,000.00 moral damages, ₱75,000.00 as exemplary damages and another ₱30,000.00 as civil indemnity.

Costs against the accused.

x x x x x x x x x

SO ORDERED.[9]

---

[7] *Rollo*, pp. 4-6.

[8] CA *rollo*, p. 57.

[9] *Rollo*, p. 15.

Hence, this appeal with accused-appellant raising the following assignment of errors:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE BEYOND REASONABLE DOUBT THE RELATIONSHIP BETWEEN THE VICTIM AND THE ACCUSED-APPELLANT.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[10]

Article 266-A of the Revised Penal Code (RPC) provides that Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;
b) When the offended party is deprived of reason or is otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority;
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Whereas, Article 266-B of the RPC provides the penalties for the crime of rape:

ART. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

---

[10] CA *rollo*, p. 39.

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.

Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[11]

The accused-appellant's argument that the prosecution failed to prove his relationship to AAA fails to persuade Us. Here, both the RTC and the CA found that the prosecution had sufficiently proved that the accused-appellant is AAA's father. Such finding is conclusive on this Court for, after all, We are not a trier of facts.

We quote with conformity the finding of the CA that accused-appellant is the father of AAA, to wit:

Accused-appellant admitted, on several occasions, that he is the father of AAA. In his Memorandum dated September 15, 2010, he phrased the issue to be resolved in this manner: 'Whether or not Accused Blas Gaa is guilty of raping his own daughter AAA', a clear admission of his relationship with the victim. There, he did not raise the issue of whether AAA was his daughter. Similarly, as pointed out by the People in its Appellee's Brief, during accused-appellant's cross-examination on September 15, 2009, he admitted that AAA was one of his two children. xxx xxx

---

[11] *People v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

x x x x x x x x x

AAA's birth certificate also shows that Blas Rodriguez Gaa is her father. It is clear as crystal that accused-appellant is the father of AAA. His claim that he is not is obviously his futile attempt to defend himself and remove the qualifying circumstance of the rape for which he was convicted in order to lower his penalty.[12]

As to the second assignment of error, accused-appellant claims that the testimony of AAA did not show that accused-appellant was able to insert his penis to the vagina of AAA, however slight. Thus, taken together with the absence of hymenal laceration in the medical report, the same creates a doubt as to whether the rape was consummated.

We are not convinced.

In rape cases, the credibility of the victim is almost always, the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis.[13]

The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[14] This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying,

---

[12] *Rollo*, pp. 8-10.

[13] *People v. Enrique Ceballos Jr. y Cabrales*, G.R. No. 169642, September 14, 2007.

[14] *People v. Quirino Cabral y Valencia,* G.R. No. 179946, December 23, 2009.

their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which, are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.[15]

Here, the RTC found AAA's testimony straightforward, candid and was delivered in a convincing manner which leaves no room for doubt that AAA was in fact raped by accused-appellant.[16] We see no cogent reason to depart from the foregoing rule, since the accused-appellant failed to demonstrate that the RTC and the CA overlooked, misunderstood or misapplied some facts of weight and substance that will alter the assailed Decision.

AAA was steadfast in stating that the penis of accused-appellant touched the "*bokana*" of her vagina, thus:

COURT:

Q. When you said that you avoid (sic) the penis of your father, you are saying that his penis did not actually enter into your vagina?
A. No, Your Honor.

Q. But the very penis itself touched your vagina, is it not?
A. Yes, Your Honor.

ATTY. CABAGUE:
Your Honor, may the victim clarify what portion of the vagina touch (sic).

COURT:
Alright, let us ask her.

Q. What portion of your vagina did your father's 'ari' touch?
A. The inside portion of my vagina, Your Honor.

---

[15] *People v. Anastacio Amistoso y Broca*, G.R. No. 201447, January 9, 2013, citing *People v. Aguilar*, G.R. No. 177749, December 17, 2007.

[16] CA *rollo*, p. 55.

ATTY. CABAGUE:
Q. But it did not touch the lip of your vagina?
A. 'Nagdikit po.'

x x x x x x x x x

PROS. MATA:
Redirect, Your Honor.

Q. When you said 'sa may parting gitna' and that it touched the lip, where is that?
A. Near the hole, ma'am (sa may butas).

Q. You said that it touched the hole, do we get correctly that it touched the hole of your vagina?

A. Yes, ma'am.[17]

The foregoing testimony establishes the fact that accused-appellant's penis penetrated, however slight, the lips of the female organ or the labia of the pudendum. As such, the crime of rape was consummated.

It is well-settled that full penetration of the female genital organ is not indispensable. It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Any penetration of the female organ by the male organ, however slight, is sufficient. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape.[18]

With Our finding that the rape was consummated, We now determine whether accused-appellant should be charged with simple statutory rape or qualified statutory rape. As We have ruled earlier, the relationship of the accused-appellant with the victim has been sufficiently proved by the prosecution. Likewise, AAA's minority was established by her Birth Certificate[19]

---

[17] *Rollo*, pp. 11-12.

[18] *People v. Alejandro Viojela y Asartin*, G.R. No. 177140, October 17, 2012.

[19] Exhibit "A" for the prosecution. Exhibits folder, p. 1.

showing that AAA was born on November 3, 1991. Thus, AAA was below 12 years of age at the time of the commission of the two rape incidents.

Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the two Informations and that the same were sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of two counts of Qualified Statutory Rape. Thus, the CA is correct in imposing upon the accused-appellant the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty, pursuant to Section 3[20] of Republic Act No. 9346 (RA 9346), entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

However, We modify the amounts awarded to AAA in view of recent jurisprudence[21] imposing a minimum amount of Php 100,000 as civil indemnity; Php 100,000 as moral damages; and Php 100,000 as exemplary damages in cases where the proper penalty for the crime committed by the accused is death but where it cannot be imposed because of the enactment of RA 9346.[22]

Thus, We increase the award of civil indemnity from Php 75,000 to Php 100,000; moral damages from Php 75,000 to Php 100,0000; and exemplary damages from Php 30,000 to Php 100,000.

Further, a legal interest of 6% per annum will be imposed on the total amount of damages awarded to AAA counted from the date of the finality of this judgment until fully paid.

---

[20] Sec. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[21] *People v. Gambao*, G.R. No. 172707, October 1, 2013 and *People v. Edilberto Pusing y Tamor*, G.R. No. 208009, July 11, 2016.

[22] *People v. Gambao*, *id.*

WHEREFORE, the foregoing considered, the appeal is **DISMISSED**. The Court of Appeals' Decision dated February 13, 2014 in CA-G.R. CR-H.C. No. 04906 finding BLAS GAA y RODRIGUEZ **GUILTY** beyond reasonable doubt of two counts of Qualified Statutory Rape and sentencing him to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for each count of Qualified Statutory Rape is **AFFIRMED WITH MODIFICATIONS** that: (a) the award of civil indemnity, moral damages and exemplary damages are increased to One Hundred Thousand Pesos (₱100,000); and (b) interest at the rate of 6% per annum is imposed on all damages awarded from the date of the finality of this judgment until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 214301. June 7, 2017]

RAMON MANUEL T. JAVINES, *petitioner, vs.* **XLIBRIS *a.k.a.* AUTHOR SOLUTIONS, INC., JOSEPH STEINBACH, and STELLA MARS OUANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A DECISION BECOMES FINAL AS AGAINST A PARTY WHO DOES NOT APPEAL THE SAME AND AN APPELLEE WHO HAS NOT HIMSELF APPEALED CANNOT OBTAIN FROM THE APPELLATE COURT

ANY AFFIRMATIVE RELIEF OTHER THAN THOSE GRANTED IN THE DECISION OF THE COURT BELOW.— The Labor Arbiter and the NLRC uniformly held that Javines' employment was terminated for just cause under Article 297 (formerly Article 282) of the Labor Code. It is undisputed that from this unanimous finding, Javines failed to move for reconsideration nor challenged said ruling before the CA. Consequently, the NLRC decision finding Javines to have been dismissed for just cause became final. For failure to file the requisite petition before the CA, the NLRC decision had attained finality and had been placed beyond the appellate court's power of review. Although appeal is an essential part of judicial process, the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Settled are the rules that a decision becomes final as against a party who does not appeal the same and an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. Hence, the finding that Javines was dismissed for just cause must be upheld.

2. **ID.; ID.; COURT OF APPEALS; INSTANCES WHEN THE APPELLATE COURT IS GIVEN BROAD DISCRETIONARY POWER TO WAIVE THE LACK OF PROPER ASSIGNMENT OF ERRORS AND TO CONSIDER ERRORS NOT ASSIGNED.—** Javines' insistence that the *petition for certiorari* filed by Xlibris throws open the entire case for review such that the issue of whether or not he was dismissed for just cause ought to have been addressed by the CA is entirely misplaced. While it is true that the appellate court is given broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, it has authority to do so in the following instances: (a) when the question affects jurisdiction over the subject matter; (b) matters that are evidently plain or clerical errors within contemplation of law; (c) matters whose consideration is necessary in arriving at a just decision and complete resolution of the case, or in serving the interests of justice or avoiding dispensing piecemeal justice; (d) matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored; (e) matters closely related to an error assigned; and (f) matters

upon which the determination of a question properly assigned is dependent.

3. **ID.; ID.; APPEALS; GENERALLY LIMITED TO REVIEWING ERRORS OF LAW.—** [T]he jurisdiction of the Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law and does not extend to a re-evaluation of the sufficiency of evidence upon which the courts *a quo* had based its determination. What is more, findings of fact of labor tribunals when affirmed by the CA bind this Court. We find no compelling reason in this case to depart from the foregoing settled rules.

APPEARANCES OF COUNSEL

Torredes Cedeno & Asssociates for petitioner.
Joseph Tanco for respondents.

D E C I S I O N

TIJAM, *J*.:

Challenged in this Petition for Review[1] under Rule 45 are the Decision[2] dated June 26, 2014 and Resolution[3] dated August 28, 2014 of the Court of Appeals[4] (CA) in CA G.R. SP No. 08126, which affirmed the decision of the National Labor Relations Commission (NLRC) of Cebu City holding that petitioner Ramon T. Javines (Javines) had been dismissed with just cause but lacked compliance with procedural due process. For lack of procedural due process, the CA modified the NLRC's award of nominal damages from PhP10,000 to PhP1,000.

The facts of the instant case are simple and undisputed:

---

[1] *Rollo*, pp. 3-18, with Annexes.

[2] *Id*. at 19-29.

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

[4] Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Gabriel T. Ingles and Renato C. Francisco.

Javines was hired by respondent Xlibris as Operations Manager on September 1, 2011. Approximately 10 months after, or on July 27, 2012, Javines was terminated for falsifying/tampering three meal receipts.

The falsification was discovered on July 5, 2012 when Javines submitted the meal receipts for reimbursement to the finance department. Prompted by said discovery, the company's Finance Officer prepared an incident report on the same day.

Consequently, a Notice to Explain was issued on July 6, 2012 to Javines for alleged violation of Sections 9.5 and 9.6 of the Employee's Code of Conduct and charging him with acts constituting dishonesty.[5] Xlibris obtained certified copies of the meal receipts from the fast food chains concerned and Javines was notified that the following receipts were tampered:

a. Franckfort, Inc. (KFC) O.R. No. 3452 dated 3/31/12 from PhP 540.00 to PhP 5,450.00;

b. McDonald's O.R. No. 027900 from PhP 107.00 to PhP 2,207.00; and

c. McDonald's O.R. No. 027822 dated 4/3/12 from PhP 164.00 to PhP 3,164.00.

On July 10, 2012, Javines submitted his written explanation, denying having tampered the receipts. He explained that as Operations Manager, he is responsible for securing reimbursement for expenses incurred by the supervisors under him. He further explained that it is the supervisors who submit the receipts to him and for which, he prepares a reimbursement request. Once the reimbursement is made, Javines distributes the cash to the supervisor concerned. Javines argued that while he prepares the request for reimbursement, he has no knowledge or part in the tampered receipts.[6]

On July 13, 2012, an administrative hearing was held. Javines failed to explain why and how the incident transpired. Instead,

[5] *Supra* note 2, at 20

[6] *Id.* at 21.

Javines requested for further investigation since, at that time, he allegedly could not recall who submitted the receipts to him.[7]

Consequently, on the same day, notices to explain were sent to the supervisors under Javines. In their written accounts, the supervisors denied participation in the tampered receipts.[8]

On July 27, 2012, Xlibris terminated Javines' employment through an "end of employment notice."[9]

Javines then filed a complaint[10] for illegal dismissal. The complaint was, however, dismissed by the Labor Arbiter who found that Javines' dismissal was for just cause and with due process.

On appeal,[11] the NLRC modified the decision of the Labor Arbiter, finding that, while Javines was dismissed for just cause, he was not afforded procedural due process. In particular, the NLRC noted that after the administrative hearing, notices to explain were immediately sent to the supervisors who denied participation in the falsification of the receipts. The NLRC noticed that no other hearing was called thereafter so as to afford Javines the opportunity to confront the witnesses against him before he was dismissed. As such, the NLRC awarded nominal damages in the amount of PhP10,000 in Javines' favor.[12]

Javines failed to move for reconsideration[13] of the NLRC's decision while Xlibris' motion for partial reconsideration was denied. Thus, only Xlibris elevated the case to the CA on *certiorari* on the sole issue that the NLRC gravely abused its

---

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] Docketed as NLRC RAB Case No. 08-1185-12.

[11] Docketed as NLRC Case No. VAC-05-000300-13.

[12] *Supra* note 2, at 22.

[13] See Javines' *Comments and Opposition to the Petition (for Certiorari); Rollo*, p. 53.

discretion in holding that it failed to comply with the requirements of procedural due process.[14]

By way of comment,[15] Javines reiterated his position that he was not afforded procedural due process because his request for further investigation for purposes of identifying the source of the questioned meal receipts was never granted. Additionally, Javines questioned the cause of his dismissal on the argument that Xlibris failed to prove by substantial evidence the misconduct imputed against him.[16]

The Ruling of the CA

The CA partially granted the petition.[17] It observed that while Javines was given a chance to explain his side and adduce evidence in his defense through his written explanation and through the administrative hearing, he was nevertheless not given the opportunity to rebut the additional pieces of evidence secured by Xlibris thereafter and considered by Xlibris in arriving at the decision to terminate him.

However, the CA reduced the award of nominal damages from PhP10,000 to PhP1,000 considering that the altered meal receipts show a discrepancy of PhP10,010.

The CA thus disposed:

> IN LIGHT OF ALL THE FOREGOING, the instant petition for *certiorari* is PARTIALLY GRANTED. The Decision dated July 16, 2013 and Resolution dated September 30, 2013 of the NLRC of Cebu City in NLRC Case No. VAC-05-000300-2013 (RAB Case No. VII-08-1185-2012), are MODIFIED, in that the NLRC's award of nominal damages in favor of Ramon Manuel T. Javines is REDUCED to PhP1,000.00.
>
> SO ORDERED.[18]

---

[14] *Id*. at 71.

[15] *Supra* note 13, at 56.

[16] *Id*. at 58.

[17] *Supra* note 2.

[18] *Supra* note 2, at 29.

Only Javines moved for reconsideration[19] of the CA Decision, arguing that he was not dismissed for just cause. Xlibris opposed[20] Javines' motion for reconsideration on the ground that the issue as to whether or not Javines was dismissed for cause was never raised in its *petition for certiorari* filed before the CA nor discussed in the CA Decision. Xlibris further argued that the Labor Arbiter and the NLRC unanimously found that Javines was dismissed for just cause, which findings Javines failed to challenge by interposing a timely appeal therefrom.

The CA denied[21] Javines' motion for reconsideration, prompting Javines to file the instant Petition.

The Issue

The lone issue to be resolved is whether the CA erred in affirming the NLRC'S finding that Javines was dismissed for just cause.

The Ruling of this Court

The petition lacks merit.

The Labor Arbiter and the NLRC uniformly held that Javines' employment was terminated for just cause under Article 297 (formerly Article 282) of the Labor Code. It is undisputed that from this unanimous finding, Javines failed to move for reconsideration nor challenged said ruling before the CA. Consequently, the NLRC decision finding Javines to have been dismissed for just cause became final. For failure to file the requisite petition before the CA, the NLRC decision had attained finality and had been placed beyond the appellate court's power of review. Although appeal is an essential part of judicial process, the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Settled are the rules that a

---

[19] *Rollo*, pp. 33-40.

[20] See *Opposition/Comment Re: Private Respondent's "Motion for Reconsideration"*; *id.* at 41-45.

[21] *Supra* note 3.

decision becomes final as against a party who does not appeal the same[22] and an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below.[23] Hence, the finding that Javines was dismissed for just cause must be upheld.

Javines' insistence that the *petition for certiorari* filed by Xlibris throws open the entire case for review such that the issue of whether or not he was dismissed for just cause ought to have been addressed by the CA is entirely misplaced.

While it is true that the appellate court is given broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned,[24] it has authority to do so in the following instances: (a) when the question affects jurisdiction over the subject matter; (b) matters that are evidently plain or clerical errors within contemplation of law; (c) matters whose consideration is necessary in arriving at a just decision and complete resolution of the case, or in serving the interests of justice or avoiding dispensing piecemeal justice; (d) matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored; (e) matters closely related to an error assigned; and (f) matters upon which the determination of a question properly assigned is dependent.[25]

---

[22] *WT Construction, Inc. v. Province of Cebu*, G.R. Nos. 208984 & 209245, September 16, 2015; See *Singh v. Liberty Insurance Corp.*, 118 Phil. 532, 535 (1963).

[23] *Manese v. Jollibee Foods Corporation*, G.R. No. 170454, October 11, 2012, 684 SCRA 34, 49; *Hiponia-Mayuga v. Metropolitan Bank and Trust Co.*, G.R. No. 211499, June 22, 2015.

[24] *Martires v. Chua*, G.R. No. 174240, March 20, 2013, 694 SCRA 38, 54, citing *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 691, 702-703.

[25] *Tolentino-Prieto v. Elvas*, G.R. Nos. 192369 & 193685, November 9, 2016, citing *Macaslang v. Zamora*, G.R. No. 156375, May 30, 2011, 649 SCRA 92, 102-103.

None of the aforesaid instances exists in the instant case. Thus, the CA cannot be faulted for no longer discussing the issue of whether indeed there exists just cause for his dismissal.

Instead, in the *petition for certiorari* filed before the CA, Xlibris only questioned the award of nominal damages for failure to comply with procedural due process. Emphatically, neither Xlibris nor Javines further questioned the CA's award on this point. As such, the issue as to whether the requirements of procedural due process to constitute a valid dismissal were complied with has been resolved with finality. In any event, such involves a question of fact which the Court does not allow in a petition filed under Rule 45.[26] It has been consistently held that the jurisdiction of the Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law and does not extend to a re-evaluation of the sufficiency of evidence upon which the courts *a quo* had based its determination.[27] What is more, findings of fact of labor tribunals when affirmed by the CA bind this Court. We find no compelling reason in this case to depart from the foregoing settled rules.

WHEREFORE, the petition is **DENIED**. The Decision dated June 26, 2014 and Resolution dated August 28, 2014 of the Court of Appeals finding petitioner Ramon Manuel T. Javines to have been dismissed for just cause and awarding nominal damages in the amount of PhP1,000 in his favor are **AFFIRMED *in toto***.

SO ORDERED.

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

---

[26] *NDC Tagum Foundation, Inc. v. Sumakote*, G.R. No. 190644, June 13, 2016.

[27] *Felicilda v. Uy*, G.R. No. 221241, September 14, 2016.

THIRD DIVISION

[G.R. No. 215195. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE DESCARTIN, JR.** ***y*** **MERCADER,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT, SUSTAINED BY THE COURT OF APPEALS, RESPECTED.—** In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which, are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.
2. **CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; ABSENCE OF FREE CONSENT IS CONCLUSIVELY**

PRESUMED WHEN THE VICTIM IS BELOW THE AGE OF 12.— Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

3. **ID.; QUALIFIED RAPE; TWIN CIRCUMSTANCES OF MINORITY OF THE VICTIM AND HER RELATIONSHIP TO THE OFFENDER MUST CONCUR.—** To raise the crime of rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur. In the present case, the elements of qualified rape were sufficiently alleged in the Information, to wit: a) AAA was 11 years old on the day of the alleged rape; and b) accused-appellant is AAA's. father. The foregoing elements were sufficiently proven by the prosecution. That AAA was 11 years old during the commission of the rape and that accused-appellant is AAA's father were established by AAA's Certificate of Live Birth.

4. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF MINOR RAPE–VICTIM, UPHELD; DISCREPANCIES AS TO MINOR MATTERS, IRRELEVANT TO THE ELEMENTS OF THE CRIME, CANNOT BE CONSIDERED AS GROUND FOR ACQUITTAL.—** When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give

out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. x x x [T]he inconsistency as to whether AAA cried in silence or loudly should be given liberal appreciation considering that the same is not an essential element of the crime of rape. What is decisive is that accused-appellant's commission of the crime charged was sufficiently proved. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal.

5. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL TESTIMONY AND IDENTIFICATION OF THE COMPLAINANT.— [A]ccused-appellant's bare denial and alibi deserve scant consideration. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. AAA's positive and straightforward testimony that she was raped by accused-appellant deserves greater evidentiary weight than accused-appellant's uncorroborated defenses.

6. CRIMINAL LAW; RAPE; CLOSE PROXIMITY OF OTHER RELATIVES AT THE SCENE OF THE RAPE DOES NOT NEGATE THE COMMISSION OF THE CRIME.— It is well-settled that close proximity of other relatives at the scene of the rape does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.

7. ID.; QUALIFIED RAPE; PENALTY AND DAMAGES.— Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the Information and sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of statutory rape under Article 266-A paragraph 1(d), as qualified under Article 266-B of the RPC. x x x [W]ith the advent of Republic Act No. 9346 (R.A. No. 9346), entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines", x x x accused-appellant should be imposed a penalty of *reclusion perpetua,* without eligibility for parole, in lieu of the death penalty. x x x We modify the amounts awarded to AAA in view of the recent jurisprudence imposing a minimum amount of PhP 100,000 as civil indemnity; PhP 100,000 as moral damages; and PhP 100,000 as exemplary damages in cases where the proper penalty for the crime committed by the accused is death but where it cannot be imposed because of the enactment of R.A. No. 9346.

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

TIJAM, *J*.:

Accused-appellant Jose Descartin, Jr. y Mercader challenges in this appeal the August 8, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00959-MIN, which affirmed the judgment of conviction for the crime of Qualified Rape rendered against him on June 13, 2011[2] by the Regional Trial Court (RTC), Branch 8 of Davao City in Criminal Case No. 52-760-03.

The accusatory portion of the Information, reads:

---

[1] Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras.

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

"on or about 19 July 2003, in Davao City, Philippines, and within this Honorable Court's jurisdiction, the Accused, who is the 11-year-old(sic) minor victim AAA's[3] biological father, which relationship by consanguinity is alleged as a qualifying circumstance, had carnal knowledge of his (Accused) 11-year-old(sic) minor daughter AAA, willfully and feloniously.

CONTRARY TO LAW.[4]

When accused-appellant was arraigned, he pleaded not guilty to the offense charged.[5] Thereafter, trial on the merits ensued.

As culled from the records, the facts of the case are as follows:

AAA testified that accused-appellant is her father and that she has 3 other younger sisters. They rented a house in Davao City with Frigem Almocera (Almocera) who rented a room therein, while her mother was working in Manila.

On the evening of July 19, 2003, after watching television, AAA went to sleep in the sala of their house with her three younger sisters, while Almocera was sleeping in his room.

Accused-appellant then arrived from a drinking spree in their neighbor's house. Upon arriving, accused-appellant removed AAA's shorts and panty, and raised AAA's right leg but the latter lowered the same to prevent accused-appellant from raping her. However, accused-appellant was still able to successfully insert his penis into AAA's vagina. AAA felt pain and could only cry in silence. AAA failed to wake up her siblings or shout for help while her father was raping her because she was afraid of her father and she could not move her hands anymore. When accused-appellant was finished, he wiped the semen from his pants and put back AAA's shorts.[6]

---

[3] The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 and A.M. No. 12-7-15-SC.

[4] Records, p. 1.

[5] *Id*. at 19.

[6] *Rollo,* pp. 4-7.

The next day, July 20, 2003, AAA together with Almocera, went to their neighbor, Virginia Capote (Capote). AAA then confided to Capote that accused-appellant raped her. Upon hearing the story, Capote brought AAA to the Davao Medical Center Women and Protection Unit for medical examination. Thereafter, Capote accompanied AAA to the Sasa Police Station to report the incident.

On the other hand, accused-appellant testified that on the day of the alleged rape, he was in Tagum City with his youngest child to get the payment for the motorcycle that his brother bought from him. When he returned to their house on July 20, 2003, at around 4:00 p.m., he was suddenly arrested by the police officers for allegedly raping her daughter, AAA.

On June 13, 2011, the RTC convicted accused-appellant of the crime of Qualified Rape, to wit:

> Finding the Accused, Jose Descartin, Jr. y Mercader, Guilty of Rape under Article 266-A and qualified under paragraph 5 of Article 266-B, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.
>
> SO ORDERED.[7]

On appeal, the CA affirmed with modification the decision of the RTC, to wit:

> WHEREFORE, the instant appeal is DENIED for lack of merit. The Decision dated June 13, 2011 of the Regional Trial Court of Davao City, Branch 8, in Criminal Case No. 52,760-03(sic), finding accused-appellant guilty beyond reasonable doubt of the crime of qualified statutory rape is hereby AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay AAA the sum of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages plus 6% interest per annum on the total monetary awards from finality of this decision until fully paid.[8]

---

[7] CA *rollo,* p. 41.

[8] *Rollo,* p. 23.

Hence, this appeal with accused-appellant raising this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[9]

In seeking for his acquittal, accused-appellant claimed that the testimony of AAA as to the alleged rape was not sufficient to convict him of the offense charged. Accused-appellant specifically pointed out that the prosecution failed to elicit testimony from AAA that he made a push and pull movement. He also averred that the testimony of AAA as to the fact of carnal knowledge is too vague.

We are unconvinced.

In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis.[10]

The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[11] This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through

---

[9] CA *rollo,* p. 22.

[10] *People v. Enrique Ceballos Jr. y Cabrales,* G.R. No. 169642, September 14, 2007.

[11] *People v. Quirino Cabral y Valencia,* G.R. No. 179946, December 23, 2009.

their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which, are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.[12]

In the present case, both the RTC and the CA found that AAA's testimony was straight, candid, spontaneous and steadfast even on cross-examination. Thus, We see no cogent reason to depart from the foregoing rule, since the accused-appellant failed to demonstrate that the RTC and the CA overlooked, misunderstood or misapplied some facts of weight and substance that would alter the assailed Decision.

Article 266-A of the Revised Penal Code (RPC) provides that Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

---

[12] *People v. Anastacio Amistoso y Broca,* G.R. No. 201447, January 9, 2013, citing *People v. Aguilar,* G.R. No. 177749, December 17, 2007.

Whereas, Article 266-B of the RPC provides the penalties for the crime of rape:

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[13]

To raise the crime of rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur.[14]

In the present case, the elements of qualified rape were sufficiently alleged in the Information, to wit: a) AAA was 11 years old on the day of the alleged rape; and b) accused-appellant

---

[13] *People v. Guillermo B. Cadano, Jr.,* G.R. No. 207819, March 12, 2014.

[14] *Id*.

is AAA's. father. The foregoing elements were sufficiently proven by the prosecution. That AAA was 11 years old during the commission of the rape and that accused-appellant is AAA's father were established by AAA's Certificate of Live Birth.[15]

AAA also recounted her harrowing experience, as follows:

> PROS. LEMANA (direct examination)
> Q. You said that you were inside your house in the evening of July 19, 2003, what were you doing inside your house?
> A. I was sleeping after I watched television.
>
> Q. In what particular part of your house did you sleep?
> A. In the sala of our house.
>
> Q. How about your other siblings, when you were asleep, where were they?
> A. They were beside me.
>
> Q. How about your uncle, Frigem Almocera, where was he
> A. He was in the room.
>
> Q. You said your (sic) were sleeping at that time, what happened afterwards?
> A. My father removed my shorts.
>
> Q. You said your father removed your short pants, after removing your short pants what else did he do
> A. He took off my panty.
>
> Q. After removing your panty, what else did he do?
> A. He raised my right leg.
>
> x x x x x x x x x
>
> **Q. After raising your right leg, what else did your father do?**
> **A. He inserted his penis to my vagina.**
>
> Q. At that point your father removed your short pants, your panty and raised your right leg and inserted his penis to your vagina, what were you doing?
> A. I tried to immediately put down my right leg.

---

[15] Exhibit "A" of the Prosecution, Folder of Exhibits. See Court of Appeals' Decision dated August 8, 2014, *Rollo,* p. 9.

Q. What was the reaction of your father when you did that
A. He raised it again.

Q. Did your father really succeed in inserting his penis into your vagina?
A. Yes.

Q. When at that point when he inserted his penis in your vagina, what did you feel?
A. I felt pain.

Q. Did you cry?
A. I cried in silence.

Q. Why?
A. Because I can't do anything.

Q. Why do you say that you could not do anything about the situation?
A. Because I was afraid of my father.

Q. Did your father doing (sic) this before to you before this incident?
A. Yes, ma'am.

x x x x x x x x x

Q. You said your father succeeded in inserting his penis in to your vagina, after that what happened?
A. He wiped the semen that came out from his penis.

Q. After that what happened?
A. He did not wipe my vagina instead he put back my short pants.[16] (Emphasis ours)

AAA's foregoing testimony sufficiently established that accused-appellant inserted his penis into her vagina and succeeded in having carnal knowledge of her. When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped.[17] When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only

[16] TSN, May 4, 2005, pp. 4-7.

[17] *People v. Edilberto Pusing y Tamor,* G.R. No. 208009, July 11, 2016.

her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[18]

In *People v. Canoy,*[19] We held that it is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not been aggrieved. The foregoing legal dictum especially applies in this case, since accused-appellant failed to prove any ill motive on the part of AAA to falsely accuse him of such a serious charge.

The allegation of the accused-appellant that he could not have summoned enough courage to molest AAA knowing the danger that he will be caught considering that AAA's three siblings were beside her when the alleged rape occurred, and Almocera was just sleeping in the other room, is without merit.

It is well-settled that close proximity of other relatives at the scene of the rape does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.[20]

---

[18] *People v. Guillermo B. Cadano, Jr., supra* note 13.

[19] 459 Phil. 933 (2003).

[20] *Supra* note 11.

Neither is the allegation of accused-appellant that AAA's failure to ask for help from his siblings or from Almocera, despite the fact that he did not employ force or intimidation, could be a ground to acquit him.

In *People v. Villamor,*[21] AAA's silence and failure to shout or wake up her siblings do not affect her credibility. The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.[22]

Further, the inconsistency as to whether AAA cried in silence or loudly should be given liberal appreciation considering that the same is not an essential element of the crime of rape. What is decisive is that accused-appellant's commission of the crime charged was sufficiently proved. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal.

---

[21] G.R. No. 202187, February 10, 2016.

[22] *Id.*

In contrast, accused-appellant's bare denial and alibi deserve scant consideration. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[23]AAA's positive and straightforward testimony that she was raped by accused-appellant deserves greater evidentiary weight than accused-appellant's uncorroborated defenses.

Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the Information and sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of statutory rape under Article 266-A paragraph 1(d), as qualified under Article 266-B of the RPC. Thus, the CA is correct in imposing upon accused-appellant the penalty of *reclusion perpetua.* However, with the advent of Republic Act No. 9346 (R.A. No. 9346), entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," Section 3 thereof provides that:

Sec. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

Thus, accused-appellant should be imposed a penalty of *reclusion perpetua,* without eligibility for parole, in lieu of the death penalty, pursuant to Section 3 of R.A. No. 9346.

However, We modify the amounts awarded to AAA in view of the recent jurisprudence[24] imposing a minimum amount of

---

[23] *People v. Guillermo B. Cadano, Jr.,* G.R. No. 207819, March 12, 2014.

[24] *People v. Gamboa,* G.R. No. 172707, October 1, 2013 and *People v. Edilberto Pusing y Tamor,* G.R. No. 208009, July 11, 2016.

PhP 100,000 as civil indemnity; PhP 100,000 as moral damages; and PhP 100,000 as exemplary damages in cases where the proper penalty for the crime committed by the accused is death but where it cannot be imposed because of the enactment of R.A. No. 9346.[25]

Thus, We increase the award of civil indemnity from PhP 75,000 to PhP 100,000; moral damages from PhP 75,000 to PhP 100,000; a nd, exemplary damages from PhP 30,000 to PhP 100,000.

WHEREFORE, the instant appeal is **DISMISSED** The Court of Appeals' Decision dated August 8, 2014 in CA-G.R. CR-H.C. No. 00959- MIN which found accused-appellant Jose Descartin, Jr. y Mercader **GUILTY** in Criminal Case No. 52-760-03 of Qualified Statutory Rape is **AFFIRMED** with **MODIFICATIONS** that: (a) the awards of civil indemnity, moral damages and exemplary damages are each increased to One Hundred Thousand Pesos (₱100,000); and (b) interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

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

Mendoza,[*] *J.,* on leave.

---

[25] *People v. Gambao,* G.R. No. 172707, October 1, 2013.

[*] Designated as additional member as per Raffle dated February 27, 2017.

THIRD DIVISION

[G.R. No. 217459. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO FORTUNA ALBERCA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT CONCURRED WITH BY THE COURT OF APPEALS, RESPECTED.—** [Q]uestions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied to the appellate courts. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more strictly applied if the appellate court has concurred with the trial court as in this case.

2. **ID.; ID.; ID.; TESTIMONIES OF CHILD RAPE-VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT.—** We are one with the RTC and CA in applying the jurisprudential principle that testimonies of child victims are given full weight and credit, for 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. Accused-appellant's imputation of ill-motive to the young victim deserves scant consideration. Indeed, no woman, least of a child, will concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.

3. **CRIMINAL LAW; RAPE; NOT NEGATED BY THE ABSENCE OF HYMENAL LACERATION AND SPERMATOZOA.—** The absence of hymenal laceration is

of no moment. Contrary to the accused-appellant's theory, the same does not negate the fact of rape as a broken hymen is not an essential element of rape. In fact, this Court has, in a previous case, affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to stay intact despite repeated sexual intercourse. Likewise, the absence of hymenal fluid or spermatozoa is not a negation of rape. The presence or absence thereof is immaterial since it is penetration, not ejaculation, which constitutes the crime of rape.

4. **ID.; ID.; NOT ALL VICTIMS REACT THE SAME WAY TO RAPE INCIDENTS.—** Accused-appellant's argument that AAA's demeanor after the alleged rape incidents was unbelievable and contrary to human experience also could not sway Us. As already settled in jurisprudence, not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. The mere fact that accused-appellant has moral ascendancy over AAA, being the latter's surrogate father, coupled with AAA's tender age and accused-appellant's threat against her, would suffice to justify AAA's fear in abiding by accused-appellant's orders, failure to resist, and also option to keep the harrowing experience to herself.

5. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; FAILS AS AGAINST A CATEGORICAL AND POSITIVE IDENTIFICATION OF AN ACCUSED.—** Denial and alibi are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And as often stressed, a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.

6. **CRIMINAL LAW; QUALIFIED RAPE; PENALTY AND DAMAGES.—** As regards the penalty, while We uphold the imposition of *reclusion perpetua* in lieu of the death penalty pursuant to Republic Act (R.A.) No. 9346, the victim being

below 18 years old and the offender being a step-parent or common-law spouse of the victim's mother, We find it proper to modify the award of damages in accordance with the prevailing jurisprudence pronounced in the case of *People v. Jugueta,* stating that when the penalty imposed is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the civil indemnity, moral damages, and exemplary damages to be imposed will each be PhP100,000 for each count of rape.

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

TIJAM, *J.*:

Questioned in this appeal is the Decision[1] dated July 16, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01071, which sustained accused-appellant's conviction for two counts of Qualified Rape by the Regional Trial Court (RTC), Branch 25 in Maasin City, Southern Leyte, in its Decision[2] dated June 15, 2009 in Criminal Case Nos. 2304 and 2305.

The Factual and Procedural Antecedents

In two separate Amended Informations, accused-appellant was charged with Qualified Rape in this manner, *viz.*:

<u>In Criminal Case No. 2304</u>

That on or about the 7th day of September 2000 at 1:00 o'clock in the afternoon, more or less, at barangay Tigbawan, city of Maasin, province of Southern Leyte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, who is the common-

---

[1] Penned by Court of Appeals Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, CA *rollo,* pp. 4-20.

[2] Penned by Judge Ma. Daisy Paler Gonzales, *id.* at 34-45.

law husband of the mother of the victim, with lustful Intent and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously ravish the victim, AAA, 11 years of age, and successfully had sexual intercourse with said victim without her consent and against her will, to the damage and prejudice of said AAA and of the social order.

CONTRARY TO LAW.[3]

In Criminal Case No. 2305

That on or about the 4th day of January 2001 at 7:00 o'clock in the morning, more or less, at barangay Canyuom, city of Maasin, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the common-law husband of the mother of the victim, with lustful intent and by means of force, threat and intimidation, did then and there willfully, unlawfully, and feloniously ravish the victim, AAA, 11 years of age, and successfully had sexual intercourse with said victim without her consent and against her will, to the damage and prejudice of said AAA and of the social order.

CONTRARY TO LAW.[4]

Upon arraignment on May 10, 2001, accused-appellant pleaded not guilty to the charges.[5] Pre-trial and trial thereafter ensued.[6]

During trial, the prosecution presented the testimonies of the following witnesses, to wit: AAA, the victim; CCC, the mother of the victim; Dr. Teodula K. Salas, the doctor who physically examined AAA; SPO2 Generoso Guerra, the officer on duty when the victim was brought to the police station to file a complaint; and Jumar Carsola, AAA's classmate who was with her before the second rape happened.[7]

---

[3] *Supra* note 1, at 5.

[4] *Id*.

[5] *Id*.

[6] *Id*.

[7] Accused-Appellants Brief, CA *rollo,* pp. 21-33.

AAA testified that on September 7, 2000, at around one o'clock in the afternoon, on her way home from her grandmother's house, the accused-appellant, her mother's live-in partner, waylaid her and dragged her towards the forest. Upon reaching the Mabaguhan trees, accused-appellant removed his short pants and then undressed her. She tried to resist but he threatened to kill her with the long firearm that he was carrying at that time. He then made her lie down, held her hands together, placed himself on top of her, inserted his penis into her vagina and made rapid push and pull movements. Thereafter, AAA went home and did not tell anybody about the incident as accused-appellant threatened to kill her and her family.[8]

On January 4, 2001, at around seven o'clock in the morning, AAA was on her way to school with her brother and classmates when they saw accused-appellant. Accused-appellant told AAA to go with him to the forest and ordered her brother and classmates to go ahead and leave her. AAA refused but accused-appellant held her hands and made her walk ahead of him. When they reached the forest, he dragged her inside the hut, took his short pants off, undressed her, made her lie down, inserted his penis into her vagina, and made repeated push and pull movements. Thereafter, he told her to go to school. AAA's brother and classmates told her mother that accused-appellant brought AAA to the forest. This prompted CCC to bring AAA to the police station to report the incident and to the hospital for an examination, where it was found out that AAA was no longer a virgin.[9]

On April 3, 2001, AAA was re-examined and found out that she was about four months pregnant. The child was, however, delivered prematurely at seven months on July 26, 2001 and died.[10]

---

[8] *Id*.

[9] *Id*. at 25.

[10] *Id*.

AAA's testimony was corroborated by the other prosecution witnesses.

SPO2 Guerra testified that he was on duty when AAA was brought to the police station. AAA narrated to him the rape incidents. He then assisted AAA in executing her affidavit. SPO2 Guerra also testified that accused-appellant was invited for questioning but he could not be found at his residence. On January 14, 2001, however, accused-appellant voluntarily appeared at the police station and admitted that he raped AAA.[11]

For its part, the defense presented the testimonies of Dr. Salas, Barangay Captain Antonio Jualo of Barangay, Tigabawan, Maasin City, and accused-appellant.[12]

In the main, accused-appellant raised the defense of denial and alibi, alleging that he could not have raped AAA on September 7, 2000 at one o'clock in the afternoon as he was at that time processing copra in another barangay, which is six kilometers away from the barangay where the rape was allegedly committed.[13] He also averred that he could not have raped AAA in the morning of January 4, 2001 as AAA and BBB left to go to the police station at around eight o'clock that morning to report that he slapped them both on January 2, 2001 and that by 8 o'clock that evening, he was arrested and placed in jail.[14]

Accused-appellant further averred that AAA was ill-motivated in filing false charges of rape against him because she wanted him and her mother to separate.[15]

Accused-appellant also pointed out that AAA was already pregnant before the alleged second rape on January 4, 2001 as testified to by Dr. Salas, hence, accused-appellant theorized that he could not have fathered the child.[16]

---

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

[12] *Supra* note 7, at 27.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

The Ruling of the RTC

In its June 15, 2009 Decision, the RTC gave full faith and credit to AAA's testimony, being a girl in her tender years, pursuant to the principle that youth and immaturity, especially in a rape case, are generally badges of truth and sincerity.[17] The RTC observed that no amount of enmity or desire to have the accused leave her mother would impel a child to subject herself to such a traumatic process as public as a trial for rape.[18]

The findings of Dr. Salas also corroborate AAA's testimony. The RTC ruled that the non-virgin state of the victim when first examined is enough proof that penetration occurred, which is an essential requisite of carnal knowledge. The RTC also noted that the age of the stillborn child at the time of delivery is consistent with the date of the second rape, January 4, 2001. It further ruled that the absence of marks of external bodily injuries does not negate rape as proof of injury is not an essential element of the crime.[19]

AAA's conduct after the rape incidents, according to the trial court, should not be taken against her. Her non-revelation of the rape incidents can be attributed to her fear as the accused-appellant threatened to kill her and her family.[20]

The RTC ruled that the positive and categorical testimony of a rape victim should prevail over the accused-appellant's bare denial and alibi, the latter being self-serving.

Finally, the RTC took into consideration the special qualifying circumstance of the accused-appellant's relationship to the victim, the same being properly alleged in the Amended Informations and proven during the trial.[21]

The RTC disposed, thus:

---

[17] *Supra* note 2, at 40.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 43.

WHEREFORE, premises considered, the court finds the accused Alberto Fortuna Alberca GUILTY beyond reasonable doubt of two (2) counts of qualified rape committed against (AAA), eleven-year-old daughter of his common-law spouse, and sentences him to suffer *reclusion perpetua* in each case, instead of death, in accordance with Republic Act No. 9346.

For each count of qualified rape, the accused is hereby ordered to pay (AAA) the sums of seventy five thousand pesos (₱75,000.00) as civil indemnity, seventy five thousand pesos (₱75,000.00) as moral damages, and twenty five thousand pesos (₱25,000.00) as exemplary damages.

SO ORDERED.[22]

The Ruling of the CA

The CA sustained accused-appellant's conviction as found by the RTC, upholding AAA's credibility as a witness as she was firm and unrelenting in pointing to the accused-appellant as the one who raped her on two occasions.[23]

The CA also ruled that there is no standard behavioral response from rape victims; hence, the truth or falsehood of an allegation of rape cannot be gauged therefrom, contrary to the accused-appellant's argument.[24]

The CA likewise dismissed accused-appellant's argument that the absence of physical injury, hymenal laceration, and seminal fluid negates the fact of rape, the same not being an essential element of the crime.[25]

The fact that AAA was found to be seven months pregnant on July 26, 2001, leading to the conclusion that she was already pregnant on December 26, 2000, does not negate the fact of rape on January 4, 2001.[26] The CA cited jurisprudence to the

---

[22] *Id*. at 45

[23] *Id.* at 9.

[24] *Id*. at 16.

[25] *Id*.

[26] *Id*.

effect that a month's difference in the stage of pregnancy as shown by the physical examination is not substantial.[27]

The CA, thus, affirmed the RTC's finding that the prosecution was able to establish accused-appellant's guilt beyond reasonable doubt to the charges. The appellate court, however, modified the penalty by increasing the exemplary damages awarded by the RTC from Twenty Five Thousand Pesos (Php25,000) to Thirty Thousand Pesos (Php30,000) to conform with the prevailing jurisprudence at that time.[28] Also, the CA imposed an interest on the rate of six percent per annum on all the damages awarded from the finality of the judgment until said amounts are fully paid.[29]

The CA, in its appealed Decision, disposed thus:

WHEREFORE, the appeal is hereby **DENIED.** The Regional Trial Court's Decision finding accused-appellant Alberto Fortuna Alberca guilty beyond reasonable doubt of two (2) counts of the crime of qualified rape, sentencing him to suffer the penalty of *reclusion perpetua, in lieu* of death and ordering him to pay the offended party ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages for each count of qualified rape is **AFFIRMED** with **MODIFICATION** that the exemplary damages is increased to ₱30,000.00 for each count of qualified rape.

Accused-appellant Alberto Fortuna Alberca is further ordered to pay the offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this decision until such amounts shall have been duly paid.

SO ORDERED.[30]

Hence, this appeal.

Both the Office of the Solicitor General (OSG), for the People, and the accused-appellant manifested before this Court that they

---

[27] *Id*.

[28] *Id*. at 19.

[29] *Id*.

[30] *Id*. at 20.

are adopting their respective Briefs filed before the CA in lieu of the supplemental briefs required by this Court.[31]

The Issue

The sole issue in this case is whether or not the accused-appellant is guilty beyond reasonable doubt of two counts of Qualified Rape.

This Court's Ruling

In the main, accused-appellant attacks AAA's credibility, averring that the facts and circumstances narrated by AAA are improbable and questionable.[32] Specifically, accused-appellant points out that AAA did not shout and ask for help while she was allegedly being dragged along the road. AAA likewise did not run away when she had the opportunity to do so while accused-appellant was allegedly taking off his pants which took time. Also, AAA's story that accused-appellant told her to come with him to the forest when she was with her brother and classmates in a public road during daytime was unbelievable, according to the accused-appellant, as she could have refused to go with him, cried for help, and fought back but she did not. Accused-appellant avers that the RTC merely assumed the truthfulness of the said narration pursuant to the principle on minor witnesses. The accused-appellant also raises the fact of the absence of seminal fluid and physical injury, and the improbability of having sexual intercourse with AAA from December 18, 2000 to January 4, 2001, as the latter was already pregnant during that period.[33]

We affirm the conviction.

The Court is not at all swayed by the arguments of the accused-appellant. The RTC and the CA have aptly and thoroughly discussed every defense raised by the accused-appellant.

---

[31] *Rollo,* pp. 33-37 and 40-43.

[32] *Supra* note 7, at 28.

[33] *Id.*

Time and again, this Court has held that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied to the appellate courts.[34] Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more strictly applied if the appellate court has concurred with the trial court as in this case.

We are, thus, one with the RTC and CA in applying the jurisprudential principle that testimonies of child victims are given full weight and credit, for 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.[35] Accused-appellant's imputation of ill-motive to the young victim deserves scant consideration. Indeed, no woman, least of a child, will concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[36] As found by the RTC and CA, AAA's testimony was candid, spontaneous, and consistent. We find no cogent reason to deviate from such finding.

Besides, as can be gleaned from the records, the assailed findings and ruling were not solely based on AAA's testimony. The testimonies of the other prosecution witnesses, corroborating that of AAA's, were also considered. Jumar Carsola's testimony

---

[34] *People of the Philippines v. Floro Buban Barcela,* G.R. No. 208760, April 13, 2014.

[35] *People of the Philippines v. Ricardo Pamintuan y Sahagun,* G.R. No. 192239, June 5, 2013.

[36] *People of the Philippines v. Gregorio Corpuz y Espiritu,* G.R. No. 168101, February 13, 2006.

corroborated that of AAA's narration of facts as to the second rape in that they were together on their way to school when the accused-appellant asked AAA to go to the forest with him and ordered the others to go ahead and leave AAA with him. The medical findings of Dr. Salas that AAA was not a virgin anymore, as well as the period of her pregnancy, coincided with the rape incidents. Thus, while it has been held in the past that the accused in rape cases may be convicted solely on the basis of the victim's testimony which passed the test of credibility,[37] in this case, there is more than sufficient evidence presented to arrive at such conclusion.

The absence of hymenal laceration is of no moment. Contrary to the accused-appellant's theory, the same does not negate the fact of rape as a broken hymen is not an essential element of rape.[38] In fact, this Court has, in a previous case, affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to stay intact despite repeated sexual intercourse.[39]

Likewise, the absence of hymenal fluid or spermatozoa is not a negation of rape.[40] The presence or absence thereof is immaterial since it is penetration, not ejaculation, which constitutes the crime of rape.[41] Besides, the absence of the seminal fluid from the vagina could be due to a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina, or simply the washing of the vagina after the

---

[37] *People of the Philippines v. Floro Manigo y Macalua,* G.R. No. 194612, January 27, 2014.

[38] *People of the Philippines v. Hilario Opong y Taesa,* G.R. No. 177822, June 17, 2008.

[39] *People of the Philippines v. Hilario Opong y Taesa,* G.R. No. 177822, June 17, 2008.

[40] *People of the Philippines v. Jose Perez @ Dalegdeg,* G.R. No. 182924, December 24, 2008.

[41] *Id*.

sexual intercourse.[42] At any rate, the presence of spermatozoa is not an element of the crime of rape.[43]

Anent accused-appellant's theory as to the impossibility of sexual intercourse with AAA on January 4, 2001 as she was already pregnant on December 26, 2000, being found as seven months pregnant on July 26, 2001, the CA aptly cited the case of *People v. Adora,*[44] thus:

> Computation of the whole period of gestation, thus, becomes a purely academic endeavor. In this light, while most authorities would agree on an average duration, there are still cases of long and short gestations.
>
> Thus, the stage of development of the fetus cannot be determined with any exactitude, and an error of at least two weeks, if not more, should be allowed for this, together with the recognized variation in the duration of normal pregnancies, makes it very unsafe to dogmatize in a medico-legal case xxx.
>
> More importantly, should be pointed out that these consolidated cases are criminal cases for rape, not civil actions for paternity or filiation. The identity of the father of the victim's child is a non-issue. Even her pregnancy is beside the point. What matters is the occurrence of the sexual assault committed by the appellant on the person of the victim xxx. At any rate, that the victim was already pregnant before the first rape does not disprove her testimony that the appellant raped her.

The CA correctly concluded, therefore, that the finding that AAA was already seven months pregnant as of July 26, 2001 cannot be considered a hundred percent accurate assessment and thus, does not discount the possibility that accused-appellant raped and even impregnated AAA on January 4, 2001, which notably was just nine days apart from the estimated start of AAA's pregnancy on December 26, 2000.

---

[42] *Id*.

[43] *Id*.

[44] G.R. Nos. 116528-31, July 14, 1997.

Accused-appellant's argument that AAA's demeanor after the alleged rape incidents was unbelievable and contrary to human experience also could not sway Us. As already settled in jurisprudence, not all victims react the same way.[45]Some people may cry out, some may faint, some may be shocked into insensibility, others may appear to yield to the intrusion.[46] Some may offer strong resistance, while others may be too intimidated to offer any resistance at all.[47] The mere fact that accused-appellant has moral ascendancy over AAA, being the latter's surrogate father, coupled with AAA's tender age and accused-appellant's threat against her, would suffice to justify AAA's fear in abiding by accused-appellant's orders, failure to resist, and also option to keep the harrowing experience to herself.

Lastly, pitted against AAA's clear, convincing, and straightforward testimony, accused-appellant's unsupported denial and alibi cannot prevail.

Denial and alibi are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[48] And as often stressed, a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.[49]

All told, We find no reversible error in the factual findings and legal conclusions of the RTC, as affirmed by the CA.

---

[45] *People of the Philippines v. Leonardo Battad and Marcelino Bacnis,* G.R. No. 206368, August 6, 2014.

[46] *Id*.

[47] *Id.*

[48] *People of the Philippines v. Dione Barberan and Dione Delos Santos,* G.R. No. 208759, June 22, 2016

[49] *Supra* note 60.

As regards the penalty, however, while We uphold the imposition of *reclusion perpetua* in lieu of the death penalty pursuant to Republic Act (R.A) No. 9346,[50] the victim being below 18 years old and the offender being a step-parent or common-law spouse of the victim's mother,[51] We find it proper to modify the award of damages in accordance with the prevailing jurisprudence pronounced in the case of *People v. Jugueta,*[52] stating that when the penalty imposed is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the civil indemnity, moral damages, and exemplary damages to be imposed will each be PhP100,000 for each count of rape.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. Accordingly, the assailed Decision of the Court of Appeals dated July 16, 2014 in CA-G.R. CR-HC No. 01071 is hereby **AFFIRMED WITH MODIFICATION** as follows:

"WHEREFORE, the appeal is hereby DENIED. The Regional Trial Court's Decision finding accused-appellant Alberto Fortuna Alberca guilty beyond reasonable doubt of two (2) counts of the crime of qualified rape, sentencing him to suffer the penalty of *reclusion perpetua, without eligibility for parole, in lieu of death* and ordering him to pay the offended party **PhP100,000 as civil indemnity,**

---

[50] ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.; in relation to:

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua,* when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code;

[51] Article 266-B.

[52] *People of the Philippines v. Ireneo Jugueta,* G.R. No. 202124, April 5, 2016.

PhP100,000 as moral damages, and PhP100,000.00 as exemplary damages for each count of qualified rape is AFFIRMED.

Accused-appellant Alberto Fortuna Alberca is further ordered to pay the offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision until such amounts shall have been fully paid."

SO ORDERED.

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

Martires,[*] *J.,* on leave.

THIRD DIVISION

[G.R. No. 219590. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCIAL M. PARDILLO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; NO ARREST, SEARCH AND SEIZURE CAN BE MADE WITHOUT A VALID WARRANT ISSUED BY A COMPETENT JUDICIAL AUTHORITY; EXCEPTIONS; SECTION 5(a), RULE 113 ON WARRANTLESS ARREST WHICH JUSTIFIES A SUBSEQUENT SEARCH.—** It is well-settled that no arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority. Any evidence obtained in violation of this provision is inadmissible for any purpose in any proceeding. However, the rule against warrantless searches and seizures admits of exceptions. One of which is warrantless arrest [under Section 5(a), Rule 113,] which justifies a subsequent search. x x x For the exception in Section 5(a) to operate, this

[*] Designated as Additonal Member as per Raffle dated March 16, 2017.

Court has ruled that two elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY IN THE HANDLING OF EVIDENCE; SUBSTANTIAL COMPLIANCE SUFFICIENT PROVIDED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS IS PRESERVED.—** Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, substantial compliance with the legal requirement on the handling of the seized item is sufficient. This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirement under Section 21 of RA 9165, such procedural lapse is not fatal and will not render the items inadmissible in evidence. x x x Jurisprudence is replete with cases indicating that while the chain of custody should ideally be perfect, in reality, it is not, as it is almost always, impossible to obtain an unbroken chain. The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; POLICE OFFICERS ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER.—** It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Time and again, We reiterate that factual findings of the trial court, when adopted and confirmed by the CA, as in this case, are binding and conclusive upon this Court save for certain exceptions, which are not existent in this case.

APPEARANCES OF COUNSEL

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

DECISION

TIJAM, *J*.:

Accused-appellant Marcial M. Pardillo appeals the Decision[1] dated July 31, 2013 promulgated by the Court of Appeals (CA) in CA-G.R. CR No. 01689, which affirmed the judgment of conviction for violation of Section 11, Article II, Republic Act (RA) No. 9165[2] rendered against him in a Decision[3] dated April 16, 2010 by the Regional Trial Court (RTC), 7th Judicial Region, Branch 13, Cebu City in Criminal Case No. CBU-79099.

The Facts

On February 2, 2007, at around 3 o'clock in the afternoon, SPO1 Metodio Aparis (SPO1 Aparis), together with PO3 Macarinas and PO2 Tremaine Sotto (PO2 Sotto), conducted a roving patrol at Garfield Street, Barangay Suba, Cebu City. While doing the same, SPO1 Aparis noticed the accused-appellant, who was holding two pieces of white transparent sachets in his right hand, in an alley. SPO1 Aparis suspected that the sachets are dangerous drugs; and so, he introduced himself as a police officer and inquired what the accused-appellant was holding. Accused-appellant replied that somebody just asked him to buy shabu.

The police officers brought the accused-appellant to the police station. While on their way to the said station, SPO1 Aparis took custody of the seized articles. Upon reaching the station, SPO1 Aparis placed the markings "MMP-1" and "MMP-2" on the two plastic sachets for laboratory examination. The seized items were brought to the PNP Crime Laboratory. In a Chemistry Report, the items were found positive for methamphetamine hydrochloride or shabu.

---

[1] CA *rollo* at 56-70, penned by Associate Justice Gabriel Ingles and concurred in by Associate Justices Pampio A. Abarintos and Marilyn Lagura-Yap.

[2] *"AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."*

[3] Promulgated by Judge Meinrato P. Paredes; *CA rollo* at 30-31.

An Information was filed against the accused-appellant for violation of Section 11, Article II, RA 9165, which reads:

That on or about the 2nd day of February 2007 at about 3:00 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control, two (2) heat sealed plastic packets of white crystalline substance having a total weight of 0.07 gram locally known as "Shabu", containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[4]

For his part, accused-appellant narrated that he was just standing outside his house when a man suddenly approached him and held up his left hand. Subsequently, he was frisked. Said man introduced himself as a police officer while simultaneously showing his firearm tucked in his right side. Soon after, the police officer's companions arrived and invited him to the police station. At the police station, he was asked if he knew a certain Edwin who was selling shabu, to which he replied in the negative.

The RTC Ruling

In its Decision[5] dated April 16, 2010, the RTC found the accused-appellant guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165 and sentenced him to imprisonment of 12 years and one day to 13 years. He was also ordered to pay a fine in the amount of Three Hundred Thousand Pesos (PhP 300,000). The *fallo* thereof reads:

WHEREFORE, Judgment is hereby rendered finding accused· MARCIAL PARDILLO guilty beyond reasonable doubt of violating Section 11, Article II, RA 9165 and sentences him to imprisonment of twelve years and one day to fifteen years and a fine of ₱300,000.00.

The two heat sealed plastic packets of white crystalline substance marked Exhibit "A" known as shabu, a dangerous drug is hereby ordered confiscated in favor of the government and destroyed pursuant to law.

---

[4] Records, p. 1.

[5] *Supra* note 3.

SO ORDERED.[6]

The CA Ruling

On appeal, the CA rendered a Decision[7] dated July 31, 2013, affirming the RTC's decision in its entirety. The dispositive portion thereof reads:

> WHEREFORE, the appeal is DENIED. The Decision dated April 16, 2010, of the Regional Trial Court, 7th Judicial Region, Branch 13, Cebu City in Civil Case No. CBU-79099 is AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[8]

Accused-appellant then appealed to this Court for review.[9]

The Issues

The issues for resolution are: (1) whether or not there was a valid warrantless arrest and subsequent seizure of accused-appellant's effects; and (2) whether or not the chain of custody was broken.

The Court's Ruling

It is well-settled that no arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority.[10] Any evidence obtained in violation of this provision is inadmissible for any purpose in any proceeding. However, the rule against warrantless searches and seizures admits of exceptions.[11]

One of which is warrantless arrest, which justifies a subsequent search. Section 5(a), Rule 113 provides that:

---

[6] *Rollo,* p. 31.

[7] *Supra* note 1.

[8] *Rollo,* p. 70.

[9] *Id*. at 19.

[10] *People v. Breis,* G.R. No. 205823, August 17, 2015.

[11] *Id*.

Section 5. *Arrest without warrant; when lawful.*— A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; xxx

For the exception in Section 5(a) to operate, this Court has ruled that two elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[12]

The factual circumstances surrounding the arrest of the accused-appellant and the subsequent seizure of the illegal drugs lead Us to conclude that the exception applies, as: (1) SPO1 Aparis, PO3 Macarinas and PO2 Sotto were conducting a roving patrol on Garfield St. because of the rampant drug-trafficking in said area;[13] (2) SPO1 Aparis saw the accused-appellant holding transparent sachets, containing a white crystalline substance; (3) SPO1 Aparis identified himself as a police officer and inquired about the substance which accused-appellant was holding; and (4) upon SPO1 Aparis' inquiry, accused-appellant replied that somebody just asked him to buy what he was holding.[14]

Accused-appellant's act of holding sachets of white crystalline substance, in an area where drug-trafficking is prevalent, was seen by SPO1 Aparis' naked eye as it was plainly exposed to the latter's view. Also, it is to be noted that he tried to exculpate himself from the liability when he was confronted by a police officer. Thus, accused-appellant's argument that he was just merely walking, and not committing a crime when he was arrested by SPO1 Aparis, is flimsy and unlikely.

Coming to the second issue, We hold that the chain of custody was unbroken.

---

[12] *Miclat, Jr. v. People,* G.R. No. 176077, August 31, 2011.

[13] TSN, February 23, 2010, p. 13.

[14] *Id.* at 8.

Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, substantial compliance with the legal requirement on the handling of the seized item is sufficient. This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirement under Section 21 of RA 9165, such procedural lapse is not fatal and will not render the items inadmissible in evidence.[15]

As the CA held, SPO1 Aparis testified in a clear and categorical manner regarding the seizure, custody, and handling of the two heat-sealed plastic sachets containing shabu.[16] To recall, SPO1 Aparis marked the items with "MMP1" and "MMP2" upon their arrival at the police station. SPO1 Aparis then prepared a request for laboratory examination. He, together with PO3 Macarinas, brought the items to the crime laboratory for testing. Records show that the seized items, marked as "MMP1" and "MMP2," were received by PO2 Abesia from PO3 Macarinas in the crime laboratory. Said items were then tested by Foreign Chemist Mutchit G. Salinas (Foreign Chemist Salinas). In a Chemistry Report issued by Foreign Chemist Salinas, the seized items were identified by their markings and tested positive for methamphetamine hydrochloride.

Jurisprudence is replete with cases indicating that while the chain of custody should ideally be perfect, in reality, it is not, as it is almost always, impossible to obtain an unbroken chain. The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.[17]

It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution

---

[15] *People v. Ando,* G.R. No. 212632, August 24, 2016.

[16] CA Decision, *Rollo,* p. 65.

[17] *People v. Lafaran,* G.R. No. 208015, October 14, 2015.

witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[18]

Time and again, We reiterate that factual findings of the trial court, when adopted and confirmed by the CA, as in this case, are binding and conclusive upon this Court save for certain exceptions, which are not existent in this case.[19]

WHEREFORE, the instant appeal is **DISMISSED.** Accordingly, the Decision dated July 31, 2013 promulgated by the Court of Appeals in CA-G.R. CR No. 01689, affirming the judgment of conviction for violation of Section 11, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby **AFFIRMED *in toto.***

SO ORDERED.

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

Mendoza,[*] *J.,* on leave.

THIRD DIVISION

[G.R. No. 219615. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAFAEL AGUDO *y* DEL VALLE,** *accused-appellant.*

---

[18] *People v. Alcala,* G.R. No. 201725, July 18, 2014.

[19] *People v. dela Pena and Delima,* G.R. No. 207635, February 18, 2015.

[*] Designated as an additional member as per Raffle dated March 15, 2017.

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS.—** For the prosecution of the crime of rape under Article 266-A (1)(a) of the Revised Penal Code, the following elements must be proved, to wit: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat, or intimidation.

2. **ID.; ID.; ID.; ACT ACCOMPLISHED THROUGH FORCE, THREAT OR INTIMIDATION; PRESENT IN CASE AT BAR.—** The second element of the crime that the bestial act was accomplished through force, threat, and intimidation was clearly established through AAA's testimony that the accused-appellant threatened to kill her and her mother if she would reveal that accused-appellant raped her. Besides, jurisprudence is to the effect that when the offender is the victim's father, there need not be actual force, threat, or intimidation. Accused-appellant is AAA's father and his moral ascendancy over his minor daughter is sufficient to take the place of actual force, threat or intimidation.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF MINOR RAPE VICTIM, UPHELD.—** Records show that AAA's narration of her horrifying experience in the hands of her father was candid and certain. The fact that AAA was in tears while testifying is also telling. Moreover, time and again, this Court has 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. It is highly improbable for a girl of tender years to impute to any man such a crime so serious as rape if what she claims is not true.

4. **ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE CREDIBLE AND POSITIVE TESTIMONY OF THE RAPE VICTIM.—** The accused-appellant's uncorroborated denial and alibi cannot prevail over the credible and positive testimony of AAA. The unbroken line of jurisprudence states that such defenses of denial and alibi, when unsubstantiated by clear and convincing evidence, constitute negative self-serving

evidence which deserve no greater evidentiary value than the testimony of a witness who testified on affirmative matters.

5. **CRIMINAL LAW; RAPE; NOT NEGATED BY THE PRESENCE OF PEOPLE NEARBY.—** Accused-appellant's argument that AAA's rape story is unbelievable as her pleas could have been easily heard by her mother considering that the latter slept just nearby, deserves scant consideration. This situation is not a novel one. Rapists are not deterred from committing the odious act of sexual abuse by the mere presence of people nearby or even family members; rape is committed not exclusively in seclusion. Several cases instruct us that lust is no respecter of time or place and rape defies constraint of time and space.

6. **ID.; QUALIFIED RAPE; PENALTY AND DAMAGES.—** We sustain the penalty imposed by the RTC as affirmed by the CA. The qualifying circumstances of relationship (father and daughter) and minority (AAA was 13 years old when the first rape incident occurred) were duly alleged in the Information and proved during the trial. The penalty of *reclusion perpetua* in lieu of death, pursuant to Article 266-B(1) of the Revised Penal Code, in relation to Republic Act No. 9346 for the crime of qualified rape is therefore proper. Pursuant to the prevailing jurisprudence, however, We increase the civil indemnity and damages awarded to PhP100,000 each.

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

TIJAM, *J.*:

This is an appeal from the Decision[1] dated October 24, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06229,

[1] Penned by Court of Appeals Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Elihu A. Ybañez and Carmelita S. Manahan, *Rollo,* pp. 2-16.

which affirmed the conviction of accused-appellant Rafael Agudo y Del Valle for the crime of Qualified Rape by the Regional Trial Court (RTC), Branch 71, of Iba, Zambales, in its Decision[2] dated May 2, 2013 in Criminal Case No. RTC-5339-1.

The Factual and Procedural Antecedents

Accused-appellant was charged with the crime of rape committed against his daughter (AAA)[3] in the following manner:

> That in or about the period from the year 2005 to 11th day of September 2008, in Barangay Simminublan, Municipality of San Narciso, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, through threat, force, and intimidation, did then and there willfully, unlawfully and feloniously have *(sic)* sexual intercourse and carnal knowledge with his own daughter 16-year old *(sic),* (AAA), which degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor (AAA).
>
> CONTRARY TO LAW.[4]

Upon arraignment, accused-appellant pleaded not guilty to the charge.[5] Pre-trial was held and, after which, trial on the merits ensued.

As found by the RTC, victim AAA, born on May 18, 1992, is accused-appellant's youngest daughter. She and her family lived in a small hut with merely a curtain as a makeshift door. Their small hut could not accommodate all of them so AAA

---

[2] Penned by Judge Consuelo Amog-Bocar, CA *rollo,* pp. 59-70.

[3] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members shall not be disclosed to protect her privacy and fictitious initials shall instead be used in accordance with *People v. Cabalquinto,* 533 Phil. 703 (2006) and A.M. No. 04-11-09 SC dated September 19, 2006.

[4] *Supra* note 1, at 3.

[5] *Id*.

slept inside the hut while her parents stayed on a bamboo bed outside.[6]

It was sometime in 2005 when accused-appellant first sexually abused AAA, who was 13 years old then. Early morning, AAA was awakened by accused-appellant when he entered their hut and climbed under the mosquito net where AAA slept. Surprised, she shouted and called her mother, BBB, telling her that her father was inside their hut. BBB was awakened and asked why accused-appellant was inside their hut at that time of the day. Accused-appellant responded that he was just looking for something and then went back to bed. Several moments later, accused-appellant went back inside their hut and this time, succeeded in placing his hands inside AAA's underwear to touch her vagina. Accused-appellant was also able to lift AAA's shirt, hold her breasts, and also insert his penis inside AAA's vagina, which caused her pain. AAA pleaded to her father saying *"Papa, huwag po, papa, huwag po"* but this did not stop accused-appellant from continuing with his bestial act. AAA did not tell her mother about the incident as the accused-appellant threatened to kill her and her mother if she did so.[7]

This incident happened several more times when they moved to a new house adjacent to their hut. AAA testified that she was repeatedly raped by her father inside her room on different occasions. Despite the door being closed, accused-appellant managed to enter her room through the opening above the door or by climbing through the window.[8]

AAA narrated the rape incident on September 11, 2008. She was still asleep early morning when she felt someone pulling down her shorts. She saw accused-appellant started crying. Accused-appellant started licking her vagina.[9]

---

[6] *Id*.

[7] *Id*. at 4.

[8] *Id*.

[9] *Id.*

Another rape incident happened on September 15, 2008. Again, AAA was asleep in her room when accused-appellant entered therein to sexually abuse his daughter. She cried for help but accused-appellant was still able to consummate the bestiality. The next morning, AAA's aunt, who lived nearby, went to AAA and asked her what happened last night as she heard cries for help. Her mother likewise asked AAA about what happened that night. AAA then revealed to them that her father had been sexually abusing her. They immediately accompanied AAA to Barangay Captain Luis Famanilay to report the same.[10] BBB and AAA's aunt testified to corroborate this narration.

Police Superintendent Medico-Legal Officer Jude Doble, MD (PSI Doble) physically examined AAA. The result of the examination revealed that AAA was no longer a virgin and that her hymen had shallow healed lacerations. No external signs of trauma or injury was, however, noted.

Accused-appellant, the defense's sole witness, denied the accusations against him. He alleged that on September 11, 2008, at about six o'clock in the morning, he drove his wife to the market and spent the entire morning working as a tricycle driver until lunch time. After lunch, he took a nap and then went around collecting scrap materials to be sold to the junk yard until nine o'clock in the evening. Thereafter, he went home and slept.[11]

On September 15, 2008, accused-appellant averred that he accidentally dropped his cellphone in the fields. Badly wanting to talk to his son in Manila, he went to AAA to borrow her phone but the latter refused. He then went back out to look for someone who could lend him a phone. He passed by the house of a certain Fermin Valdez and had a drinking spree. Thereafter, he went home and immediately slept.[12]

On September 18, 2008, accused-appellant averred that when he was on his way home, police officers stopped and accosted

---

[10] *Id.*

[11] Accused-appellant's Brief, *CA rollo,* pp. 43-58.

[12] *Id.* at 49.

him. When he asked what his offense was, they merely told him to explain at the police station. Upon getting at the station, he was immediately placed in jail. The following day, he was transferred to the Zambales Provincial Jail, where he later learned that he was being charged with raping AAA.[13]

The Ruling of the Regional Trial Court

The RTC ruled that AAA's testimony clearly established all the elements of carnal knowledge perpetrated by the accused-appellant against his minor daughter for the first time in 2005.[14] The RTC, however, found that there was no testimony on the details of the subsequent rape incidents alleged except that on September 11, 2008, AAA testified that her father licked her vagina.[15] The September 15, 2008 rape incident, likewise, cannot be considered as this incident was not alleged in the Information.[16]

The court noted that for the most part of her testimony, AAA was emotional and in tears while narrating the horrifying ordeal she went through with the accused-appellant.[17] It also noted that accused-appellant himself testified that his wife and daughter had no quarrel with him; hence, there was no reason for them to make up such imputations against him.[18] The RTC also found the Medico-Legal Report, stating that AAA had shallow healed hymenal lacerations and is no longer a virgin, to be consistent with AAA's testimony.[19]

Convinced, thus, that the accused-appellant committed the crime as charged, the RTC ruled:

---

[13] *Id*.

[14] *Supra* note 2, at 67.

[15] *Id*.

[16] *Id*. at 68.

[17] *Id*. at 69.

[18] *Id.*

[19] *Id.*

WHEREFORE, judgment is hereby rendered finding accused guilty beyond reasonable doubt of qualified rape and he is hereby sentenced to suffer the penalty of *reclusion perpetua.* Accused is also ordered to pay the offended party the amount of Php75,000 as civil indemnity, the amount of Php75,000 as moral damages, and the amount of Php30,000.00 as exemplary damages.

SO ORDERED.[20]

The Ruling of the CA

In its assailed Decision, the CA upheld the credibility of AAA's testimony and, thus, affirmed the accused-appellant's conviction.[21] The CA, however, modified the award of damages by imposing an interest of six percent per annum on the civil indemnity and all the damages awarded from the date of finality of the judgment until full payment.[22] The CA disposed, thus:

WHEREFORE, the *Decision* dated 2 May 2013 of the Regional Trial Court, Third Judicial Region, Branch 71 of Iba, Zambales, in Crim. Case No. RTC-5339-1, is hereby **AFFIRMED with MODIFICATION** in that the awards of civil indemnity and damages are subject to interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

SO ORDERED.[23]

Hence, this Appeal.

The Office of the Solicitor General (OSG), for the People, and the accused-appellant both manifested before this Court that they find it unnecessary to file a supplemental brief considering that the same will merely be a reiteration of the arguments in their respective Briefs filed with the CA.[24]

---

[20] *Id.* at 70.

[21] *Supra* note 1.

[22] *Id*. at 15.

[23] *Id.*

[24] *Rollo,* pp. 25-28 and 29-33.

The Issue

Whether or not the accused-appellant is guilty of qualified rape beyond reasonable doubt.

This Court's Ruling

The Court sustains the conviction.

For the prosecution of the crime of rape under Article 266-A (1)(a) of the Revised Penal Code, the following elements must be proved, to wit: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat, or intimidation.[25]

We find no cogent reason to deviate from the ruling of the RTC and the CA that the prosecution positively established the aforecited elements.

First, that the accused-appellant had carnal knowledge of AAA was established by the latter's clear and categorical testimony, found credible by the RTC, that accused-appellant inserted his penis in her vagina.

AAA's testimony was corroborated by the testimonies of her mother and aunt on material facts, as well as by the Medico-Legal Report stating that AAA had shallow healed hymenal lacerations and is in a no-virgin state.

The second element of the crime that the bestial act was accomplished through force, threat, and intimidation was also clearly established through AAA's testimony that the accused-appellant threatened to kill her and her mother if she would reveal that accused-appellant raped her. Besides, jurisprudence is to the effect that when the offender is the victim's father, there need not be actual force, threat, or intimidation.[26] Accused-appellant is AAA's father and his moral ascendancy over his

---

[25] *People of the Philippines v. Leonardo Battad and Marcelino Bacnis,* G.R. No. 206368, August 6, 2014.

[26] *People of the Philippines v. Jesus Burce,* G.R. No. 201732, March 26, 2014.

minor daughter is sufficient to take the place of actual force, threat or intimidation.[27] Former Chief Justice Renato S. Puno succinctly explained the reason for this rule in *People v. Chua*[28] and We quote:

> In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the very start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do.

In an attempt to escape conviction, accused-appellant questions the RTC's reliance on AAA's story that she was raped inside their small hut while her mother BBB was sleeping just outside their hut. Accused-appellant essentially argues that such story is incredible considering that BBB could have been easily awakened in such situation.

Moreover, accused-appellant questions the fact that the doctor who conducted the physical examination on AAA and issued the report, PSI Doble, was not presented in court and that in his stead, P/Insp. Maria Angela Guise testified on the medical report.[29] Thus, according to the accused-appellant, such evidence has no probative value as it was not properly identified.[30]

---

[27] *Id.*

[28] 418 Phil. 565, 582 (2001).

[29] *Supra* note 11, at 55.

[30] *Id.*

It is also the accused-appellant's theory that the healed hymenal lacerations found on AAA's vagina, assessed to be more than seven days old, belied AAA's allegation of being raped on September 11 and 15, 2008, as the said days are merely seven and three days from the date of examination on September 18, 2008.[31]

We are not swayed.

There is nothing more settled in case law than this:

> Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of witnesses' deportment on the stand while testifying, which is denied the appellate courts. The trial judge has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. Hence, the judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court.[32]

We have carefully reviewed the instant case and found no reason to deviate from the credence given by the RTC to the testimonies of the prosecution witnesses, especially that of AAA's.

Records show that AAA's narration of her horrifying experience in the hands of her father was candid and certain.[33] The fact that AAA was in tears while testifying is also telling.[34] Moreover, time and again, this Court has held that testimonies

---

[31] *Id*.

[32] *People of the Philippines v. Floro Buban Barcela,* G.R. No. 208760, April 23, 2014.

[33] *Supra* note 1, at 8-10.

[34] *Id*. at 9.

of rape victims who are young and immature deserve roll 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.[35] It is highly improbable for a girl of tender years to impute to any man such a crime so serious as rape if what she claims is not true.[36]

Accused-appellant's argument that AAA's rape story is unbelievable as her pleas could have been easily heard by her mother considering that the latter slept just nearby, deserves scant consideration. This situation is not a novel one. Rapists are not deterred from committing the odious act of sexual abuse by the mere presence of people nearby or even family members; rape is committed not exclusively in seclusion.[37] Several cases instruct us that lust is no respecter of time or place and rape defies constraint of time and space.

This Court does not find it necessary to discuss accused-appellant's submission as regards the 7-day old lacerations found in AAA's vagina, considering that the only rape incident proven in this case for which accused-appellant was convicted, was the first incident which occurred back in 2005. Besides, a medico-legal report is not indispensable to the prosecution of the rape case, it being merely corroborative in nature.[38] For the same reason, We also do not find it necessary to belabor on the issue raised by the accused-appellant on the probative value of the medico-legal report due to the non-presentation of the doctor who issued the same in court.

---

[35] *People of the Philippines v. Jose Perez @ Dalegdeg,* G.R. No. 182924, December 24, 2008.

[36] *Id.*

[37] *People of the Philippines v. Dione Barberan and Dione Delos Santos,* G.R. No. 208759, June 22, 2016, citing *People of the Philippines v. Diosdado Corial y Requiez,* 451 Phil. 703, 709-710 (2003).

[38] *People of the Philippines v. Ricardo Pamintuan y Sahagun,* G.R. No. 192239, June 5, 2013.

At this juncture, let it be stated that the fact of rape and the identity of the perpetrator may be proven even by the lone uncorroborated testimony of the victim.[39] The credible disclosure of AAA that the accused-appellant raped her is the most important proof of the commission of the crime.[40]

The accused-appellant's uncorroborated denial and alibi cannot prevail over the credible and positive testimony of AAA. The unbroken line of jurisprudence states that such defenses of denial and alibi, when unsubstantiated by clear and convincing evidence, constitute negative self-serving evidence which deserve no greater evidentiary value than the testimony of a witness who testified on affirmative matters.[41]

We also sustain the penalty imposed by the RTC as affirmed by the CA. The qualifying circumstances of relationship (father and daughter) and minority (AAA was 13 years old when the first rape incident occurred) were duly alleged in the Information and proved during the trial. The penalty of *reclusion perpetua* in lieu of death, pursuant to Article 266-B(1) of the Revised Penal Code,[42] in relation to Republic Act No. 9346[43] for the crime of qualified rape is therefore proper.

---

[39] *People of the Philippines v. Dione Barberan and Dione Delos Santos, supra* note 37.

[40] *People of the Philippines v. Anastacio Amistoso y Broca,* G.R. No. 201447, January 9, 2013.

[41] *People of the Philippines v. Alejandro Rellota y Tadeo,* G.R. No. 168103, August 3, 2010.

[42] ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

[43] SEC. 2. In lieu of the death penalty, the following shall be imposed.

Pursuant to the prevailing jurisprudence, however, We increase the civil indemnity and damages awarded to PhP100,000 each.[44]

WHEREFORE, premises considered, the instant Appeal is **DISMISSED.** Accordingly, the assailed Decision dated October 24, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06229 is hereby **AFFIRMED WITH MODIFICATION,** thus, accused-appellant is found guilty beyond reasonable doubt of qualified rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* in lieu of death and ordered to pay the victim civil indemnity, moral damages, and exemplary damages in the amount of **PhP100,000 each** subject to interest at the rate of six percent per annum from the date of finality of this judgment until full payment.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Reyes,* and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 219848. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GODOFREDO MACARAIG *y* GONZALES,** *accused-appellant.*

(a) the penalty of *reclusion perpetua,* when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code;

[44] *People of the Philippines v. Ireneo Jugueta,* G.R. No. 202124, April 5, 2016.

[*] Designated as an additional member as of Raffle dated March 15, 2017.

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; BURDEN OF PROOF SHIFTS FROM THE PROSECUTION TO THE DEFENSE.—** Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence. Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense.

2. **ID.; ID.; ID.; REQUISITES; UNLAWFUL AGGRESSION; THERE CAN BE NO SELF-DEFENSE UNLESS THE VICTIM HAD COMMITTED UNLAWFUL AGGRESSION AGAINST THE PERSON WHO RESORTED TO SELF-DEFENSE.—** To invoke self-defense, in order to escape criminal liability, it is incumbent upon the accused to prove by clear and convincing evidence the concurrence of the following requisites under the second paragraph of Article 11 of the RPC, *viz.*: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. Of all the burdens the accused-appellant carried, the most important of all is the element of unlawful aggression. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. The element of unlawful aggression must be proven first in order for self-defense to be successfully pleaded. There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.

3. **REMEDIAL LAW; EVIDENCE; HEARSAY RULE; EXCEPTION; DYING DECLARATION; REQUISITES.—** While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It

is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation." The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death."

4. CRIMINAL LAW; MURDER; PENALTY AND DAMAGES.— As to the imposable penalties, the Court affirms the penalty of *reclusion perpetua* imposed upon the accused-appellant. Under Article 248 of the Revised Penal Code, 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. We affirm the award of civil indemnity and actual damages, but the award of the other damages should be modified, in accordance with the prevailing jurisprudence. As such, we increase the award of moral damages from PhP50,000 to PhP75,000, and exemplary damages from PhP30,000 to PhP75,000. The damages awarded shall earn interest at the legal rate of six percent (6%) per annum from the 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.

DECISION

TIJAM, *J*.:

Challenged in this appeal is the November 20, 2014 Decision[1] promulgated by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06484, which affirmed the October 16, 2013 Decision[2] of the Regional Trial Court (RTC) of Calabanga, Camarines Sur, Branch 63, in Criminal Case No. 11-1623, finding accused-appellant Godofredo Macaraig y Gonzales (accused-appellant Macaraig) guilty of the crime of Murder, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of Joven Celeste (Joven) the amount of PhP75,000 as civil indemnity, PhP50,000 as moral damages, PhP16,750 as actual damages, and PhP30,000 as exemplary damages.

Accused-appellant Macaraig was charged under the following Information:

> That on the 31st day of May 2011 in Brgy. Salvacion, Baybay, Municipality of Calabanga, Province of Camarines Sur, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, while armed with a bladed instrument, did then and there, willfully, unlawfully and feloniously assault, attack and stab one JOVEN CELESTE y MALANYAON, and with treachery hitting the latter on the vital parts of his body, thereby inflicting upon him stab wound (sic) which caused his death, to the damage and prejudice of the heirs of the victim.
>
> ACTS CONTRARY TO LAW.[3]

Upon arraignment, accused-appellant pleaded not guilty.

The Version of the Prosecution

The prosecution presented the following witnesses: Francis Losano (Losano), Herson Heles (Heles), Corazon Celeste (Celeste) and Dr. Daniel Tan (Dr. Tan).

---

[1] Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz; *Rollo*, pp. 2-13.

[2] Penned by Judge Pedro M. Redona, CA *rollo*, pp. 76-87.

[3] *Id*. at 12.

The events, as put forward by the prosecution, were summarized by the Office of the Solicitor General (OSG) in its brief[4] as follows:

On 31 May 2011, at around 12:00 in the morning, Francis Losano (Francis), together with the victim Joven Celeste (Joven), and three other friends were at the basketball court of their barangay attending a dance party as it was the last day of the Sta. Cruzan.

At around one o'clock in the morning, Francis and Joven both decided to go home. On his way home, Francis saw appellant following Joven. Then he saw appellant approach Joven from the back, place his left arm over his shoulder and suddenly stabbed Joven.

After stabbing Joven, appellant saw Francis and ran after him. Sensing his life was in danger, Francis went inside his house, got a bolo and flashlight. He went back out but saw appellant ran away upon seeing him. Francis pursued appellant and caught up with him. Conscious of the possibility that appellant was armed, Francis maintained his distance. Francis asked him why he stabbed Joven, but appellant did not answer. Francis shouted for help. A friend heard his shouts and heeded his call. Appellant, on the other hand, escaped into the rice field.

Joven, despite the stab wounds, managed to get home and was able to seek help from his parents Julio and Corazon. Herson Heles (Herson), cousin of the victim, saw Julio carrying his son outside their house. Together, they boarded Joven in a tricycle and brought him to Poblacion where they boarded an ambulance which brought them to Bicol Medical Center. On their way to the hospital, Herson asked Joven about the identity of his assailant. Joven categorically told him it was appellant. Joven however expired and was declared dead on arrival at the hospital,

The search for appellant lasted until morning. Appellant was later found in a place somewhere near the Trade School in Sta. Cruz, Ratay.

Dr. Daniel Tan testified that Joven suffered one stab wound which he described as 8 cm. x 3 cm. midepigastric area, extending to the left upper quadrant, penetrating the liver, abdominal aorta, small intestine, with non-clotted blood pooled in the peritoneal cavity. The

---

[4] *Id.* at 92-103.

kind of instrument used in inflicting the wound, according to the doctor, was a pointed sharp edged instrument such as a knife or bolo.

The Version of the Defense

The defense presented as its sole witness, the accused-appellant. His version of the facts, as set forth in his brief,[5] is as follows:

> Accused GODOFREDO MACARAIG was a resident of Paolbo, Calabanga, Camarines Sur. On May 29, 2011, he was invited by his friend, Jeffrey Crobalde (hereafter referred to as "Crobalde"), to visit the latter's place in Sogod, Calabanga.
>
> In the evening of May 30, 2011, Joven was throwing stones in the window of Crobalde's house. When Macaraig told Joven to stop throwing stones, the latter left the place.
>
> At around 3:00 o'clock in the morning of May 31, 2011, after a dinking (*sic*) spree at the basketball court in Barangay Salvacion-Baybay, he was about to go to the house of Crobalde when two (2) unidentified men followed him and another man was waiting for him. One of the men tried to stab him with a *balisong* but it was the latter's companion who was hit. When he noticed that one of them was carrying a bolo, he ran away.

The RTC Ruling

On October 16, 2013, the RTC rendered judgment, finding accused-appellant guilty of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of Joven Celeste (Joven) the amounts of PhP75,000 as civil indemnity and PhP50,000 as moral damages, PhP16,750 as actual damages and PhP30,000 as exemplary damages.

The CA Ruling

Seeing merit on the RTC ruling, the CA, in its November 20, 2014 Decision, affirmed the RTC decision in its entirety.

[5] *Id*. at 60-73.

The Ruling of this Court

Accused-appellant prays for the reversal of the judgment of conviction arguing that the lower courts erred in convicting him of murder and in not considering his theory of self-defense.

The appeal fails.

After a review of the records, the Court sustains the conviction of the accused-appellant for murder.

Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence. Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense.[6]

To invoke self-defense, in order to escape criminal liability, it is incumbent upon the accused to prove by clear and convincing evidence the concurrence of the following requisites under the second paragraph of Article 11 of the RPC, *viz.*: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

Of all the burdens the accused-appellant carried the most important of all is the element of unlawful aggression. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. The element of unlawful aggression must be proven first in order for self-defense to be successfully pleaded. There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.[7]

---

[6] *People v. Cristina Samson*, G.R. No. 214883, September 2, 2015.

[7] *Rodolfo Guevarra and Joey Guevarra v. People*, G.R. No. 170462, February 5, 2014.

We do not see the credibility of accused-appellant's theory of self-defense. Suffice it to state that his version of what transpired, specifically that the victim and his companions mauled him, is vague, and too implausible to merit any weight. At the outset, accused-appellant was uncertain as to who were the men who assaulted him and whether the victim was one of those men who allegedly attempted to stab him. Further, accused-appellant claims that it was not him but the victim's companion who ended up stabbing him since accused-appellant was able to evade the blows. Evidently, without a clear showing that the victim attacked or tried to attack accused-appellant, We find that unlawful aggression cannot be deemed to have occurred. On this note, We completely agree with the appellate court's observation to wit:

> In his lone testimony, Macaraig tried to establish self-defense by testifying that on the said date and time of the incident in this case, he was alone when he left the Santa Cruzan celebration. He was, however, followed by two unidentified men, while another unidentified man was waiting for him. One of the two men poked something at him, held him in the shoulder and boxed him. He was able to evade the blow. After which another person, armed with *balisong*, tried to stab him but as he was able to evade the blow again, another person got stabbed.
>
> It is well to note that by invoking self-defense, the accused-appellant, in effect, admitted to the commission of the acts for which he was charged, albeit under circumstances that, if proven, would have exculpated him. With this admission, the burden of proof shifted to the accused-appellant to show that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the persons resorting to self-defense. "**In this case, however, the accused-appellant stated that it was not him who stabbed the victim, but the victim's companion or somebody else. From this observation alone, the trial court correctly struck down accused-appellant's** (plea) **self-defense.** As correctly stated by the State in its Comment, this assertion negates accused-appellant's defense.
>
> That said, **the presence of the elements of self-defense need not be discussed as there is no self-defense to speak of in the first**

place. Furthermore, a plea of self-defense cannot be justifiably appreciated in favor of the accused where it is not only corroborated by independent and competent evidence **but is also extremely doubtful by itself**.[8] (Emphasis supplied).

Contrary to the accused-appellant's claim of self-defense, We find that the prosecution sufficiently established accused-appellant's culpability. The testimonies of Losano and Dr. Tan, as well as the victim's dying declaration, undoubtedly support the version set forth by the prosecution that the accused-appellant went behind and collared Joven and then suddenly proceeded to stab him with a knife.

It bears to note that the wounds on the victim's body, particularly on the abdomen area, match the prosecution's narration of events. Moreover, Joven's statement prior to his death, naming accused-appellant as the assailant who stabbed him, proves accused-appellant's guilt of the crime charged.

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."[9]

The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered

---

[8] *Rollo*, pp. 10-11.

[9] *People v. Jay Mandy Maglian y Reyes*, G.R. No. 189834, March 30, 2011.

in a case in which the subject of inquiry involves the declarant's death."[10]

Heles related to the trial court Joven's *ante mortem* statement, as follows:

Q: You said you were going to bring "kapid" or Joven Celeste to the BMC, and then what happened while bringing him to the BMG, if any?
A: While we were inside the ambulance while we were traveling I was asking him who stabbed him and when we were already in Magarao, he was speaking in a low voice, so I leaned towards him and he said it was Godo Macaraig who stabbed him and he was already very weak.

Q: What did you observe from Mr. Joven Celeste when he told you that it is Godo Macaraig?
A: From what I observed, that was his last word.

Q: And then what happened next if any?
A: When we reached BMC, he was already dead.[11]

All the above requisites are present in this case. When Joven told Heles who stabbed him, he was then being brought to the Bicol Medical Center. Further, the fatal quality and extent of the injuries Joven suffered underscored the imminence of his death, as his condition was so serious that he was pronounced dead upon arrival in the hospital. There is no showing that Joven would have been disqualified to testify had he survived. Lastly, his declaration was offered in a murder case where he is the victim.

Having established accused-appellant's act of killing Joven, We shall now determine the propriety of his conviction for the crime of murder.

From the evidence and as found by the trial court and affirmed by the appellate court, the facts sufficiently prove that treachery was employed by accused-appellant when he stabbed Joven.

---

[10] *Id*.

[11] See RTC Decision citing TSN, May 2, 2012, p. 6, CA *rollo*, p. 85.

It was candidly narrated by witness Losano that accused-appellant followed Joven from behind, suddenly approached him, put his left arm over Joven's shoulder and proceeded to stab him using his right hand. Such circumstances showed that accused-appellant employed a method which tended directly and specifically to insure the execution of his dastardly act without any risk to himself arising from whatever defense which the victim might make. Verily, the attack on Joven was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. As testified to by Losano:

Q: Alright after you saw Joven heading home, what happened next after that if any?
A: There was a person behind him who was following him.

Q: Alright you said that there was a person following him. What happened next after that if any?
A: He was stabbed ma'am in front.

Q: He was stabbed by whom?
A: Godo ma'am.

Q: What is the complete name of Godo?
A: Godofredo Macaraig.

Q: How did Godo stabbed (sic) Joven Celeste?
A: **He was behind him and then when he got near, he put his left arm on Joven's shoulders and then he stab (sic) Joven using his right arm.**[12] (Emphasis supplied)

In sum, the prosecution was able to establish the accused-appellant's guilt of the crime charged beyond reasonable doubt.

As to the imposable penalties, the Court affirms the penalty of *reclusion perpetua* imposed upon the accused-appellant. Under Article 248 of the Revised Penal Code, 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

---

[12] See *Rollo*, p. 9.

commission of the crime.[13] We affirm the award of civil indemnity and actual damages, but the award of the other damages should be modified, in accordance with the prevailing jurisprudence.[14] As such, we increase the award of moral damages from PhP50,000 to PhP75,000, and exemplary damages from PhP30,000 to PhP75,000. The damages awarded shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated November 20, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 06484 finding accused-appellant GODOFREDO MACARAIG y GONZALES **GUILTY** beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, is hereby **AFFIRMED with MODIFICATION**, sentencing accused-appellant to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordering him to pay the heirs of Joven Celeste the following amounts: (a) PhP75,000 as civil indemnity; (b) PhP75,000 as moral damages; (c) PhP16,750 as actual damages; and (d) PhP75,000 as exemplary damages. All damages awarded in this case shall earn interest at the legal rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

Martires,[*] *J.*, on leave.

---

[13] *People v. Samson Berk y Bayogan*, G.R. No. 204896, December 7, 2016.

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

[*] Designated as additional Member as per Raffle dated March 15, 2017.

THIRD DIVISION

[G.R. No. 220143. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN BAAY *y* FALCO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS.—** For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.
2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** [F]indings of fact of the trial court, particularly when affirmed by the CA, are binding upon Us. As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is in the best position to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood, or misapplied some fact, or circumstances of weight and substance, the rule should not be disturbed.
3. **ID.; ID.; ID.; TESTIMONY OF THE MENTALLY-RETARDED RAPE VICTIM, UPHELD.—** The fact that AAA's testimony was practiced and instructed by her mother to impute such serious charge against the accused-appellant does not sway this Court. Given the victim's mental condition, being a 22-year old woman with a mental age of 4-5 years old, We find it highly improbable that she had simply concocted or fabricated the rape charge against the accused- appellant. We neither find it likely that she was merely coached into testifying against accused-appellant, precisely, considering her limited

intellect. In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked. Likewise, the conflicting responses of AAA to the questions on whether the accused-appellant had sex with her were succinctly explained by the trial court. According to the trial court's observation, when AAA was asked leading questions, she has the tendency to merely agree with such leading question asked. x x x Notably, AAA's statements that accused-appellant indeed raped her or had sex with her were not entirely solicited from leading questions in her direct testimony. x x x At any rate, the trial court correctly pointed out that what is significant, notwithstanding discrepancies in AAA's testimony, was the positive identification of the accused-appellant as the person who raped or had sex with her.

4. **CRIMINAL LAW; RAPE; RAPE OF A MENTAL RETARDATE IS SIMPLE RAPE; PENALTY AND DAMAGES.—** [R]ape of a mental retardate falls under paragraph 1(b), not Section 1(d) [on Statutory Rape], of [Article 266-A of the Revised Penal Code. The former], precisely refers to a rape of a female "deprived of reason." x x x [A]ccused–appellant should be held liable for simple rape. x x x Article 266-B in relation to Article 266-A(1) of the Revised Penal Code, as amended, provides that simple rape is punishable by *reclusion perpetua*. The penalty is increased to death only when the qualifying circumstance of knowledge by the accused of the mental disability of the victim, among others, is alleged in the information. In this case, while it was proven and admitted during trial that accused-appellant knew of AAA's mental retardation, the same was not alleged in the Information, hence, cannot be appreciated as a qualifying circumstance. Anent the award of damages, the increase of the award of exemplary damages from PhP30,000 to PhP75,000 is proper, in accordance with the prevailing jurisprudence on the matter. The awards of civil indemnity and moral damages in the amount of PhP75,000 each are maintained.

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

TIJAM, *J.*:

This is an appeal from the Decision[1] dated February 26, 2015 of the Court of Appeals (CA), Eighteenth Division, Cebu City, in CA-G.R. CR- H.C. No. 01590, which sustained accused-appellant's conviction for the crime of Statutory Rape in a Decision[2] dated January 4, 2013 by the Regional Trial Court (RTC) of Mambusao, Capiz, Branch 21, in Criminal Case No. 09-0886-05.

The Factual and Procedural Antecedents

In an Information filed by the Provincial Prosecutor of Capiz, accused-appellant was charged with rape as follows:

> That sometime in the month of July 2005 in Brgy. Bungsi, Mambusao, Capiz, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, willfully, unlawfully and feloniously did lie and have carnal knowledge of one (AAA), a mentally (*sic*) retardate, against the will of the latter.
>
> That the commission of the rape is aggravated by the fact that the private offended party is a mentally (*sic*) retardate who though was then 22 years old at the time of the incident, yet, considered and has mental faculties as that of a minor child.
>
> CONTRARY TO LAW.[3]

Upon arraignment on April 14, 2010, accused-appellant pleaded not guilty to the charge.[4] Trial on the merits then ensued.

---

[1] Penned by Court of Appeals Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez, *Rollo*, pp. 4-14.

[2] Penned by Judge Daniel Antonio Gerardo S. Amular, CA *rollo*, pp. 28-34.

[3] *Id*. at 28.

[4] *Id*.

The following are the events that led to the filing of the complaint and Information, as narrated by the victim, AAA and her mother, BBB.

AAA testified that sometime in July 2005, she was drying *palay* when the accused-appellant invited her to go to the forest. Upon arrival thereat, the accused-appellant pulled down her shorts and underwear, then inserted his penis in her vagina and started a pumping motion. It lasted quite long, after which, a white liquid came out of the penis of the accused-appellant. Thereafter, she went home. After the incident, AAA got pregnant.[5]

On cross-examination, she testified that she practiced and was coached by her mother on what she had to say in court and to point to the accused-appellant as the one who had sex with her but in fact, the accused-appellant did not have sex with her.[6]

The trial court, however, noted that as AAA's examination continued, AAA made conflicting answers to the query as to whether or not accused-appellant had sex with her, which prompted the court to reset the hearing to give the witness time to rest. The defense objected to the resetting, arguing that it would give the prosecution the opportunity to coach AAA.[7]

BBB testified that she came to know that her daughter was pregnant when she brought her to Dr. Hector Flores for a medical check-up and therein, AAA told her about the rape incident in the forest. BBB also brought AAA to Dra. Leah Florence Adicula-Sicad to assess AAA's mental/psychological status and then to the police for the purpose of filing the complaint. On April 21, 2006, AAA delivered a baby. This is AAA's second child, the first was fathered by a certain DDD.[8]

---

[5] *Id*. at 29.

[6] *Id*.

[7] *Id*. at 29-30.

[8] *Id*.

Dra. Adicula-Sicad testified that the mental faculties of AAA are severely deficient in areas where the executive functioning judgment and other areas of intellect are concerned. According to Dra. Adicula-Sicad's assessment, AAA's age is comparable to a child of around 4-5 years old as a result of mental retardation, which is congenital in nature. It being congenital in nature; the victim could not have consented or would not be in any position to give consent as to the consequences of a certain act.[9]

The defense presented the accused-appellant, Vicente Monajan, Remegios Llorico, and accused-appellant's mother, Teresita Baay as witnesses.

Accused-appellant denied the allegations against him. He testified that AAA's house is about 500 meters away from their house and that he knew that AAA is mentally retarded. He averred that he could not have raped AAA in July 2005 because from May 15 to August 30, 2005, he was working on the farm of a certain Motet Monajan which is about one kilometer away from the forested area where the alleged crime took place. He stayed in a hut beside the said farm and bought his needs at a store near the place. He further averred that AAA's family accused him of rape because of the trees he planted beside the pigpen owned by AAA's family.[10]

The other defense witnesses testified on the whereabouts of accused-appellant during the month when the incident allegedly occurred to corroborate accused-appellant's testimony. In addition, Teresita Baay testified that the conflict with AAA's family started in September 2005 when they discovered that AAA was pregnant and the latter's family was ashamed that the child to be born had no father. Also, AAA's family has issues with accused-appellant's family because the former claimed ownership over the trees planted by the latter.[11]

[9] *Id*.

[10] *Id*. at 30.

[11] *Id*.

The Ruling of the Regional Trial Court

In its Decision dated January 4, 2013, the RTC found that the prosecution was able to prove that the accused-appellant had carnal knowledge with AAA, a mental retardate, sometime in July 2005. It found AAA's testimony credible despite the apparent inconsistencies, explaining that the same was due to her mental condition. The RTC observed that AAA had the tendency to agree with leading questions asked. However, despite some discrepancies, AAA was consistent and positive in identifying accused-appellant as the person who raped her.[12] The trial court also noted that in the case study dated January 4, 2006 conducted by Veronica Martinez, Municipal Social Welfare and Development Officer of Mambusao, Capiz, AAA was consistent in pointing to the accused-appellant as the person who abused her. The RTC also rejected accused-appellant's defenses of denial and alibi to be unmeritorious. Accordingly, the RTC ruled:

> WHEREFORE, the Court finds the accused-appellant JONATHAN BAAY y FALCO alias "Jun-Jun" GUILTY beyond reasonable doubt of the crime of Rape which is defined and punished under Article 266-A, paragraph 1(d) in relation to Article 266-B, paragraph I of the Revised Penal Code. He is sentenced to suffer the penalty of Reclusion Perpetua. He is ordered to pay private complainant ₱50,000.00 as civil indemnity plus ₱50,000.00 as moral damages.
>
> If qualified under Article 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214, the accused, if he has agreed in writing to abide by the same disciplinary rule imposed upon convicted prisoners, shall be credited with the full duration of his preventive imprisonment, otherwise, he shall only be credited with 4/5 of the same.
>
> SO ORDERED.[13]

The Ruling of the Court of Appeals

In its assailed Decision, the CA affirmed the conviction but modified the damages awarded, thus:

---

[12] *Id*. at 33.

[13] *Supra* note 2.

WHEREFORE, the appeal is **DENIED**. The Decision dated January 4, 2013 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz in Criminal Case No. 09-0886-05 for Statutory Rape, is hereby **AFFIRMED with MODIFICATION**. Accused Jonathan Baay is found GUILTY of the crime of statutory rape as defined and punished under Article 266-A, paragraph 1(d) in relation to Article 266-B, paragraph 1 of the Revised Penal code and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the offended party AAA, the sum of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The civil indemnity and damages shall earn interest at 6% *per annum* from the finality of this decision until fully paid.

SO ORDERED.[14]

Hence, this appeal.

Both the Office of the Solicitor General (OSG), for the People, and the accused-appellant manifested that they will no longer file supplemental briefs.[15]

The Issue

Whether or not the CA, in affirming the decision of the RTC, erred in convicting the accused-appellant of Statutory Rape.

The Court's Ruling

We find the appeal unmeritorious *albeit* We modify the designation of the crime committed, as well as the indemnities awarded.

For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[16]

---

[14] *Supra* note 1, at 13.

[15] *Rollo*, pp. 22-25 and 26-29.

[16] *People of the Philippines v. Jose Dalan y Paldingan*, G.R. No. 203086, June 11, 2014.

Accused-appellant faults the RTC for finding him guilty beyond reasonable doubt of raping AAA. He insisted that he should be acquitted of the charge because doubts linger as to whether or not he had sex with AAA or the rape incident happened, considering AAA's conflicting responses to the queries regarding the same. The accused-appellant capitalizes on the fact that during AAA's cross-examination, the latter candidly stated that accused-appellant did not have sex with her.

We sustain the conviction.

The fact of AAA's mental retardation is undisputed. Even the accused-appellant admitted that he knew of AAA's mental condition. Essentially, thus, the appeal boils down to the credibility of AAA's testimony as to the fact of sexual congress between the accused-appellant and AAA.

We stress, at the outset, that prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the CA, are binding upon Us.[17] As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.[18] The trial court is in the best position to discern if the witnesses were telling the truth.[19] Without any clear showing that the trial court and the appellate court overlooked, misunderstood, or misapplied some fact, or circumstances of weight and substance, the rule should not be disturbed.[20]

In the case at bar, even though AAA's testimony was not flawless in all particulars, We do not find any justifiable reason

---

[17] *People of the Philippines v. Jesus Burce*, G.R. No. 201732, March 26, 2014.

[18] *Id.*

[19] *Id.*

[20] *Id*.

to deviate from the findings and conclusion of the RTC, as affirmed by the CA.

The fact that AAA's testimony was practiced and instructed by her mother to impute such serious charge against the accused-appellant does not sway this Court. Given the victim's mental condition, being a 22-year old woman with a mental age of 4-5 years old, We find it highly improbable that she had simply concocted or fabricated the rape charge against the accused-appellant. We neither find it likely that she was merely coached into testifying against accused-appellant, precisely, considering her limited intellect.[21] In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked.[22]

Likewise, the conflicting responses of AAA to the questions on whether the accused-appellant had sex with her were succinctly explained by the trial court. According to the trial court's observation, when AAA was asked leading questions, she has the tendency to merely agree with such leading question asked.[23]

The accused-appellant then used the said observation to argue that the reason why AAA pointed to the accused-appellant as the perpetrator was because she was asked leading questions to that effect. Upon the other hand, accused-appellant emphasized that AAA candidly admitted on cross-examination that accused-appellant did not have sex with her.[24]

We do not agree.

Notably, AAA's statements that accused-appellant indeed raped her or had sex with her were not entirely solicited from leading questions in her direct testimony. During AAA's cross, re-direct, and re-cross examinations, the trial court also propounded clarificatory questions in the following manner:

---

[21] *People of the Philippines v. Jofer Tablang*, G.R. No. 174859, October 30, 2009.

[22] *Id*.

[23] *Supra* note 2, at 32.

[24] Accused-appellant's Brief, CA *rollo*, p. 20.

COURT: But truly the accused did not have sex with you, am I correct?

A: I was raped, sir.

x x x x x x x x x

COURT: If according to you accused Jonathan Baay did not have sex with you, who had sex with you?

A: Jonathan Baay, Your Honor.

x x x x x x x x x

Q: Why he should (*sic*) be imprisoned?

A: Because he has done wrong, Your Honor, he raped me.

Q It was a different man who had sex with you?

A: Jonathan Baay, sir.[25]

Clearly, the foregoing are not leading questions. It is, thus, not merely leading questions which brought about AAA's statement pointing to him as the person who had sex with her, contrary to the accused-appellant's contention.

At any rate, the trial court correctly pointed out that what is significant, notwithstanding discrepancies in AAA's testimony, was the positive identification of the accused-appellant as the person who raped or had sex with her. We also could not disregard the study dated January 4, 2006 conducted by Veronica D. Martinez, Municipal Social Welfare and Development Officer of Mambusao, Capiz, that AAA was consistent in identifying accused-appellant as the person who abused her.[26]

We also find no reason to discredit AAA's testimony by the defense's imputation of ill-motive against AAA and her family. The defense claims that the case was filed against accused-appellant because AAA's family got angry with the accused-appellant's family because they claimed ownership over the trees planted by the latter. It is also alleged that the conflict

---

[25] *Id*. at 54-55.

[26] *Supra* note 2, at 32.

between the parties started when the accused-appellant's family discovered that AAA was pregnant and her family was ashamed that the child would be born without a father.

Again, these fail to persuade Us.

We find such conflict as regards the "trees planted" too flimsy and insignificant for AAA or her family to charge accused-appellant of such a serious crime and to make AAA publicly disclose that she had been raped and undergo the concomitant humiliation, anxiety, and exposure to a public trial.[27] Likewise, We find no reason nor wisdom in filing a criminal case against accused-appellant by mere reason that AAA's family was ashamed that AAA bore a child without a father. Indeed, AAA's family would be subject to the same, if not worse, situation in filing the case as such would inevitably put AAA in public scrutiny.

Accused-appellant's defenses of denial and alibi deserve scant consideration. As can be gleaned from the records, the testimonies of the defense witnesses which should supposedly support accused-appellant's alibi did not clearly state that it was indeed impossible for the accused-appellant to have raped AAA. At most, their testimonies merely proved that accused-appellant worked on a farm from May to August 2005.

In all, We affirm the RTC and CA's finding that the accused-appellant indeed raped AAA.

We, however, find it erroneous for the RTC and the CA to convict accused-appellant of Statutory Rape under Article 266-A, paragraph l(d) of the Revised Penal Code, as amended. The gravamen of the offense of statutory rape under the said provision is the carnal knowledge of a woman below 12 years old.[28] To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the victim; second, the identity of

---

[27] *People of the Philippines v. Joel Abat y Cometa*, G.R. No. 202704, April 2, 2014.

[28] *People of the Philippines v. Jose Dalan y Paldingan*, *supra* note 16.

the accused; and last but not the least, the carnal knowledge between the accused and the victim.[29]

In this case, it is not disputed that AAA was already 22 years old when she was raped *albeit* she has a mental age of 4-5 years old.

It should, however, no longer be debatable that rape of a mental retardate falls under paragraph 1(b), not Section 1(d), of the said provision as the same, precisely, refers to a rape of a female "deprived of reason."[30] This Court, in the case of *People v. Dalan,*[31] explained:

> We are not unaware that there have been cases where the Court stated that sexual intercourse with a mental retardate constitutes statutory rape. Nonetheless, the Court in these cases, affirmed the accused's conviction for simple rape despite a finding that the victim as a mental retardate with a mental age of a person less than 12 years old.
>
> Based on these discussions, we hold that **the term statutory rape should only be confined to situations where the victim of rape is a person less than 12 years of age**. If the victim of rape is a person with mental abnormality, deficiency, or retardation, the crime committed is simple rape under Article 266-A, paragraph 1(b) as she is considered "deprived of reason" notwithstanding that her mental age is equivalent to that of a person under 12. **In short, carnal knowledge with a mental retardate whose mental age is that of a person below 12 years, while akin to statutory rape under Article 266-A, paragraph 1(d), should still be designated as simple rape under paragraph 1(b).**[32] (*emphasis supplied*)

Considering the circumstances of this case, We find that accused-appellant should be held liable for simple rape.

At any rate, We sustain the penalty of *reclusion perpetua* imposed by both the RTC and the CA. Indeed, Article 266-B in relation to Article 266- A(1) of the Revised Penal Code, as

---

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Id*.

amended, provides that simple rape is punishable by *reclusion perpetua*. The penalty is increased to death only when the qualifying circumstance of knowledge by the accused of the mental disability of the victim, among others, is alleged in the information.[33] In this case, while it was proven and admitted during trial that accused-appellant knew of AAA's mental retardation, the same was not alleged in the Information, hence, cannot be appreciated as a qualifying circumstance.[34]

Anent the award of damages, the increase of the award of exemplary damages from PhP30,000 to PhP75,000 is proper, in accordance with the prevailing jurisprudence on the matter.[35] The awards of civil indemnity and moral damages in the amount of PhP75,000 each are maintained.[36]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. Accordingly, the Decision of the Court of Appeals in Cebu City dated February 26, 2015 in CA-G.R CR-H.C. No. 01590 is hereby **AFFIRMED WITH MODIFICATION** as follows:

WHEREFORE, the appeal is DENIED. Accused Jonathan Baay is found GUILTY of the crime of **simple rape** as defined and punished under **Article 266-A, paragraph 1(b)** in relation to Article 266-B, paragraph 1 of the Revised Penal Code and is thus sentenced to suffer the penalty of *reclusion perpetua* and to pay the offended party AAA the sum of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages and **PhP75,000.00** as exemplary damages. The civil indemnity and damages shall earn interest at 6% *per annum* from the finality of this decision until fully paid.

SO ORDERED.

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

---

[33] *People of the Philippines v. Rey Monticalvo y Magno*, G.R. No. 193507, January 30, 2013.

[34] *Id*.

[35] *People of the Philippines v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[36] *Id*.

[*] Designated as an additional member as per Raffle dated March 15, 2017.

SECOND DIVISION

[G.R. No. 220168. June 7, 2017]

MARLOW NAVIGATION PHILIPPINES, INC./MARLOW NAVIGATION CO., LTD. and/or MS. EILEEN MORALES, *petitioners, vs.* **HEIRS OF RICARDO S. GANAL, GEMMA B. BORAGAY, for her behalf and in behalf of her minor children named: RIGEM GANAL & IVAN CHARLES GANAL; and CHARLES F. GANAL, represented by SPOUSES PROCOPIO & VICTORIA GANAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, GENERALLY RESPECTED; EXCEPTIONS; WHEN THE FACTUAL FINDINGS OF THE QUASI-JUDICIAL AGENCIES CONCERNED ARE CONTRARY WITH THOSE OF THE COURT OF APPEALS.—** [I]n a petition for review on *certiorari*, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. This Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to the above rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the CA. Considering that the factual findings of the LA and the NLRC are opposed to those of the CA, it behooves this Court to look into the evidence presented to resolve the present petition.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT OF SEAFARERS; POEA-STANDARD EMPLOYMENT CONTRACT IS INTEGRATED IN EVERY SEAFARER'S CONTRACT; IN CASE OF DEATH OF A SEAFARER, BY REASON OF ANY WORK-RELATED INJURY OR ILLNESS DURING THE TERM OF EMPLOYMENT IS COMPENSABLE; ELUCIDATED.— [W]hile the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-Standard Employment Contract be integrated with every seafarer's contract. Thus, in case of death of the seafarer, Section 20(B) of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, as amended in 2010, provides x x x [that] the death of a seafarer by reason of any work-related injury or illness during the term of his employment is compensable. x x x As defined under the Standard Terms and Conditions, work-related injury, or in this case, death, is any injury arising out of and in the course of employment. The words "arising out of" refer to the origin or cause of the accident and are descriptive of its character, while the words "in the course of" refer to the time, place, and circumstances under which the accident takes place. By the use of these words, it was not the intention of the legislature to make the employer an insurer against all accidental injuries which might happen to an employee while in the course of the employment, but only for such injuries arising from or growing out of the risks peculiar to the nature of work in the scope of the workmen's employment or incidental to such employment, and accidents in which it is possible to trace the injury to some risk or hazard to which the employee is exposed in a special degree by reason of such employment. Risks to which all persons similarly situated are equally exposed and not traceable in some special degree to the particular employment are excluded.

APPEARANCES OF COUNSEL

Luzvie T. Gonzaga for petitioners.

Linsangan Linsangan & Linsangan Law Offices for respondents.

DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated February 25, 2015 and August 18, 2015, respectively, in CA-G.R. SP No. 133128. The assailed CA Decision reversed the October 21, 2013[3] and November 21, 2013[4] Resolutions of the National Labor Relations Commission (*NLRC*), which, in turn, affirmed the July 26, 2013 Decision[5] of the Labor Arbiter (*LA*) in NLRC NCR OFW [M]-00-10-16061-12 and denied petitioners' subsequent Motion for Reconsideration.[6] The LA Decision dismissed herein respondents' complaint for the payment of death and other benefits, salaries as well as damages.

The pertinent factual and procedural antecedents of the case are as follows:

On September 16, 2011, herein petitioners employed Ricardo Ganal (*Ganal*) as an oiler aboard the vessel *MV Stadt Hamburg* in accordance with the provisions of the Philippine Overseas Employment Administration (*POEA*)-Standard Employment Contract, which was executed by and between the parties. On September 20, 2011, he commenced his employment.

Around 7 o'clock in the evening of April 15, 2012, a party was organized for the crewmen of *MV Stadt Hamburg* while

---

[1] Penned by Associate Justice Jose C. Reyes, Jr., with the concurrence of Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., Annex "A" to Petition; *rollo,* pp. 41-49.

[2] Annex "B" to Petition; *id.* at 51.

[3] Records, pp. 168-179.

[4] *Id.* at 188-189.

[5] *Id.* at 128-134.

[6] *Id.* at 180-185.

the ship was anchored at Chittagong, Bangladesh. After finishing his shift at 12 midnight, Ganal joined the party. Around 3 o'clock in the morning of April 16, 2012, the ship captain noticed that Ganal was already drunk so he directed him to return to his cabin and take a rest. Ganal ignored the ship captain's order. Thus, a ship officer, a security watchman and a member of the crew were summoned to escort Ganal to his cabin. The crew members attempted to accompany him back to his cabin but he refused. They then tried to restrain him but he resisted and, when he found the chance to escape, he ran towards the ship's railings and, without hesitation, jumped overboard and straight into the sea. The crew members immediately threw life rings into the water towards the direction where he jumped and the ship officer sounded a general alarm and several alarms thereafter. Contact was also made with the coast guard and the crew members searched for Ganal, to no avail. Ganal was later found dead and floating in the water. The subsequent medico-legal report issued by the Philippine National Police showed that the cause of his death was asphyxia by drowning.

Subsequently, Ganal's wife, Gemma Boragay (*Boragay*), for herself and in behalf of their minor children, filed a claim for death benefits with petitioners, but the latter denied the claim.

Thus, on October 29, 2012, Boragay, filed with the NLRC a complaint for recovery of death and other benefits, unpaid salaries for the remaining period of Ganal's contract, as well as moral and exemplary damages.

On July 26, 2013, the LA rendered a Decision dismissing the complaint for lack of merit. The LA held that respondents' allegations are self-serving and hearsay; they failed to present evidence to substantiate their allegations; on the other hand, petitioners were able to present documentary evidence, consisting of affidavits of Ganal's fellow crew members who have direct and actual knowledge of what occurred on board the *MV Stadt Hamburg* and who attested to the fact that Ganal willfully jumped overboard. Nonetheless, the LA ordered herein petitioners to pay respondents the amount of US$5,000.00 as financial assistance.

Aggrieved by the Decision of the LA, respondents filed an appeal with the NLRC.

On October 21, 2013, the NLRC issued a Resolution denying respondents' appeal and affirming the Decision of the LA. The NLRC ruled that petitioners have duly proven that Ganal's death is not compensable as it was the result of the deliberate and willful act of Ganal and, thus, is directly attributable to him.

Respondents filed a Motion for Reconsideration, but the NLRC denied it in its November 21, 2013 Resolution.

Respondents then filed a petition for *certiorari* with the CA.

On February 25, 2015, the CA rendered its assailed Decision which reversed the October 21, 2013 and November 21, 2013 Resolutions of the NLRC. The CA held that Ganal jumped into the sea while he was overcome by alcohol and completely intoxicated and deprived of his consciousness and mental faculties to comprehend the consequence of his own actions and keep in mind his own personal safety.

Petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution dated August 18, 2015.

Hence, the present petition for review on *certiorari* based on the following grounds, to wit:

I. PETITIONERS DULY PROVED BY SUBSTANTIAL EVIDENCE THAT SEAFARER GANAL VOLUNTARILY JUMPED INTO THE OPEN SEA. THUS, CONTRARY TO THE COURT OF APPEALS' FINDINGS, THE BURDEN OF PROOF IS SHIFTED TO THE RESPONDENTS TO SHOW THAT SEAFARER GANAL WAS NOT IN HIS OWN MENTAL FACULTIES WHEN HE COMMITTED SUCH ACT.

II. THE RULINGS OF THE LOWER LABOR TRIBUNALS, UNANIMOUSLY HOLDING THAT SEAFARER GANAL COMMITTED SUICIDE, SHOULD HAVE BEEN UPHELD TO DENY THE RESPONDENTS' CLAIM FOR DEATH BENEFITS. INTOXICATION ALONE DID NOT SERVE TO RENDER INUTILE SEAFARER GANAL AS TO DEPRIVE HIM OF HIS FULL MENTAL FACULTIES EQUIVALENT TO INSANITY. SEAFARER

GANAL, DESPITE HIS INTOXICATION, DELIBERATELY JUMPED INTO THE OPEN SEA CAUSING HIS INSTANTANEOUS DEATH.[7]

Petitioners' basic contention is that respondents are not entitled to death and other benefits, as well as damages, they are claiming by reason of the demise of their predecessor-in-interest during the effectivity of his contract of employment, because his death is directly attributable to him and was a result of his willful act.

The Court finds the petition meritorious.

At the outset, it bears to reiterate that in a petition for review on *certiorari*, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[8] This Court is not a trier of facts, and this applies with greater force in labor cases.[9] Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality.[10] They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.[11]

However, it is equally settled that one of the exceptions to the above rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the CA.[12]

---

[7] *Rollo*, pp. 19-20.

[8] *Crewlink, Inc. v. Teringtering, et al.,* 697 Phil. 302, 309 (2012).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *General Milling Corporation v. Viajar*, 702 Phil. 532, 540 (2013).

Considering that the factual findings of the LA and the NLRC are opposed to those of the CA, it behooves this Court to look into the evidence presented to resolve the present petition.

It is settled that the employment of seafarers, including claims for death benefits, is governed by the contracts they sign at the time of their engagement.[13] As long as the stipulations in said contracts are not contrary to law, morals, public order, or public policy, they have the force of law between the parties.[14] Nonetheless, while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-Standard Employment Contract be integrated with every seafarer's contract.[15]

Thus, in case of death of the seafarer, Section 20(B) of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, as amended in 2010, provides as follows:

B. COMPENSATION AND BENEFITS FOR DEATH

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

2. Where death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.

3. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from

---

[13] *C.F. Sharp Crew Management, Inc., et al. v. Legal Heirs of the late Godofredo Repiso*, G.R. No. 190534, February 10, 2016.

[14] *Id.*

[15] *Id.*

the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

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

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

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

Under the above-quoted provisions of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, as amended, the death of a seafarer by reason of any work-related injury or illness during the term of his employment is compensable.

On the other hand, Section 20(D) of the same Standard Terms and Conditions states that:

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

Also, under Article 172 of the Labor Code, which may also be made applicable to the present case, the compensation for workers covered by the Employees Compensation and State

Insurance Fund are subject to the limitations on liability,[16] to wit:

> Art. 172. *Limitations of liability*. – The State Insurance Fund shall be liable for the compensation to the employee or his dependents except when the disability or death was occasioned by the employee's intoxication, willful intent to injure or kill himself or another, notorious negligence, or otherwise provided under this Title.

As defined under the above-cited Standard Terms and Conditions, work-related injury, or in this case, death, is any injury arising out of and in the course of employment.

The words "arising out of" refer to the origin or cause of the accident and are descriptive of its character, while the words "in the course of" refer to the time, place, and circumstances under which the accident takes place.[17] By the use of these words, it was not the intention of the legislature to make the employer an insurer against all accidental injuries which might happen to an employee while in the course of the employment, but only for such injuries arising from or growing out of the risks peculiar to the nature of work in the scope of the workmen's employment or incidental to such employment, and accidents in which it is possible to trace the injury to some risk or hazard to which the employee is exposed in a special degree by reason of such employment.[18] Risks to which all persons similarly situated are equally exposed and not traceable in some special degree to the particular employment are excluded.[19]

In the present case, it may be conceded that the death of Ganal took place in the course of his employment, in that it

---

[16] *Mabuhay Shipping Services, Inc. v. National Labor Relations Commission*, 271 Phil. 142, 147 (1991).

[17] *Sy v. Philippine Transmarine Carriers, Inc., et al.,* 703 Phil. 190, 199 (2013), citing *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission,* 135 Phil. 95, 110-113 (1968).

[18] *Amedo v. Olabarrieta*, 95 Phil. 33, 36 (1954), citing *Afable, et al. v. Singer Sewing Machine, Co.,* 58 Phil. 39, 42 (1933).

[19] *Id.*

happened at the time and at the place where he was working. However, the accident which produced this tragic result did not arise out of such employment. The occasion where Ganal took alcoholic beverages was a grill party organized by the ship officers of *MV Stadt Hamburg*. It was a social event and Ganal attended not because he was performing his duty as a seaman, but was doing an act for his own personal benefit. Even if the Court were to adopt a liberal view and consider the grill party as incidental to Ganal's work as a seaman, his death during such occasion may not be considered as having arisen out of his employment as it was the direct consequence of his decision to jump into the water without coercion nor compulsion from any of the ship officers or crew members. The hazardous nature of this act was not due specially to the nature of his employment. It was a risk to which any person on board the *MV Stadt Hamburg*, such as a passenger thereof or an ordinary visitor, would have been exposed had he, likewise, jumped into the sea, as Ganal had.

The necessary question that follows then is whether Ganal's act was willful. Considering his apparent intoxication, may Ganal's death, which resulted from his act of jumping overboard, be considered as directly attributable to him? Contrary to the findings of the CA, both the LA and the NLRC found and ruled in the affirmative. After a careful review of the records of the case, this Court agrees with the findings and ruling of the LA and the NLRC.

The Court agrees with the LA and the NLRC that the pieces of evidence presented by petitioners, consisting of the testimony of the crew members present at the time of the unfortunate incident,[20] as well as the accident report made by the master of the vessel,[21] prove the willfulness of Ganal's acts which led to his death. The term "willful" means "voluntary and intentional," but not necessarily malicious.[22] In the case of *Mabuhay Shipping*

---

[20] Records, pp. 89-91.

[21] *Id*. at 88.

[22] *Nieves v. Duldulao*, 731 Phil. 189, 199 (1954).

Services, Inc. v. National Labor Relations Commission,[23] the seaman, in a state of intoxication, ran amuck and committed an unlawful aggression against another, inflicting injury on the latter, so that in his own defense the latter fought back and in the process killed the seaman. This Court held that the circumstances of the death of the seaman could be categorized as a deliberate and willful act on his own life directly attributable to him. In the same manner, in the instant case, Ganal's act of intentionally jumping overboard, while in a state of intoxication, could be considered as a deliberate and willful act on his own life which is directly attributable to him.

Moreover, contrary to respondents' contention, petitioners took the necessary precautions when: (1) the ship captain advised Ganal to proceed to his cabin and take a rest; (2) Ganal was assisted by no less than three crew members who tried to persuade him to return to his cabin; (3) when he refused, the crew members tried to restrain him but he escaped and immediately ran away from them and, without warning, jumped into the sea. As earlier discussed, the law does not intend for an employer to be the insurer of all accidental injuries befalling an employee in the course of the latter's employment, but only for those which arise from or grow out of the risks necessarily associated with the workman's nature of work or incidental to his employment. Ganal's act of jumping overboard was not, in any way, connected with the performance of his duties as ship oiler. Neither could petitioners have reasonably anticipated such act on the part of Ganal. Thus, having proven their defense, the burden now rests on the shoulders of respondents to overcome petitioners' defense.

In its presently assailed Decision, the CA agreed with herein respondents and concluded that prior to jumping overboard, Ganal "was no longer in control of his actions because of excessive alcohol intake."[24] The Court, however, finds that this conclusion is not based on substantial evidence. The Court agrees with the Labor Arbiter and the NLRC that there was no

---

[23] *Supra* note 16, at 146.

[24] See CA Decision, *rollo,* p. 46.

competent proof to show that Ganal's state of intoxication during the said incident actually deprived him of his consciousness and mental faculties which would have enabled him to comprehend the consequences of his actions and keep in mind his personal safety. Respondents failed to present evidence to overcome the defense of petitioner and show that, prior to and at the time that he jumped overboard, Ganal was deprived of the use of his reason or that his will has been so impaired, by reason of his intoxication, as to characterize his actions as unintentional or involuntary. In fact, there is not even a *post mortem* report to indicate Ganal's blood alcohol concentration level at the time of his death as to give the lower tribunals or the courts an idea of how much alcohol Ganal was able to imbibe. Neither was there anything in the PNP medico-legal report which would indicate such blood alcohol content. There was also no affidavit from any of the ship officers or crew members, who witnessed the unfortunate incident, which would show that Ganal appeared to be distraught or out of his mind. Ganal may have become unruly by reason of his inebriation but such recalcitrant behavior does not necessarily prove that his subsequent act of jumping overboard was not willful on his part. Stated differently, the fact alone that he refused to be escorted to his cabin, that he resisted efforts by other crew members to restrain him and that he jumped overboard without hesitation or warning does not prove that he was not in full possession of his faculties as to characterize his acts as involuntary or unintentional.

This Court has held that even if it could be shown that a person drank intoxicating liquor, it is incumbent upon the person invoking drunkenness as a defense to show that said person was extremely drunk, as a person may take as much as several bottles of beer or several glasses of hard liquor and still remain sober and unaffected by the alcoholic drink.[25] It must be shown that the intoxication was the proximate cause of death or injury and the burden lies on him who raises drunkenness as a defense.[26]

---

[25] *Nitura v. Employees' Compensation Commission*, 278 Phil. 302, 311 (1991).

[26] *Id.*

In the present case, the Court agrees with the LA and the NLRC that respondents failed in this respect.

Neither does the Court agree with the ruling of the CA that while herein petitioners were able to prove that Ganal jumped into the open sea while in a state of intoxication, they failed to meet the burden of proving that Ganal intended to terminate his own life. Petitioners do not carry the burden of establishing that Ganal had the intention of committing suicide. Petitioners' only burden is to prove that Ganal's acts are voluntary and willful and, if so, the former are exempt from liability as the latter becomes responsible for all the consequences of his actions.

Indeed, Ganal may have had no intention to end his own life. For all we know he was just being playful. Nonetheless, he acted with notorious negligence. Notorious negligence has been defined as something more than mere or simple negligence or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety.[27] In any case, regardless of Ganal's motives, petitioners were able to prove that his act of jumping was willful on his part. Thus, petitioners should not be held responsible for the logical consequence of Ganal's act of jumping overboard.

As a final note, it is true that the beneficent provisions of the Standard Employment Contract are liberally construed in favor of Filipino seafarers and their dependents.[28] The Court commiserates with respondents for the unfortunate fate that befell their loved one; however, the Court finds that the factual circumstances in this case do not justify the grant of death benefits as prayed for by them as beneficiaries.

WHEREFORE, the instant petition for review on *certiorari* is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals, dated February 25, 2015 and August 18, 2015, respectively, are **SET ASIDE**. The October 21, 2013 and

---

[27] *Id*.

[28] *Great Southern Maritime Services, Corporation, et al. v. Surigao, et al.,* 616 Phil. 758, 767 (2009).

November 21, 2013 Resolutions of the National Labor Relations Commission in NLRC LAC No. 08-000774-13 (NLRC NCR OFW [M]-00-10-16061-12) are **REINSTATED**.

SO ORDERED.

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

Mendoza[*] and *Martires, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 220758. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **STEPHAN CABILES *y* SUAREZ *a.k.a.* "KANO,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In a prosecution for the illegal sale of dangerous drugs, such as shabu, the following elements must be duly established: (1) the identity of the buyer and seller, the object and the consideration; and, (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

2. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES, CONCLUSIVE UNLESS OTHERWISE REBUTTED.—** The direct account of law enforcement officers enjoy the presumption of regularity in the performance of their duties. It should be

noted that "unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit." Thus, unless the presumption is rebutted, it becomes conclusive. Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular. Time and again, this Court has accorded great weight to factual findings of the trial court, particularly as regards credibility of witnesses, for it had the opportunity to observe first hand the deportment and demeanor of witnesses and it was in a position to discern whether or not they were telling the truth.

3. **ID.; ID.; DENIAL; WEAK DEFENSE THAT CANNOT PREVAIL AGAINST THE POSITIVE TESTIMONY OF A PROSECUTION WITNESS.—** [A]ccused-appellant's defense of denial is inherently weak and viewed with disfavor for it can be easily concocted. Denial cannot prevail against the positive testimony of a prosecution witness. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. For this defense to succeed, it must be proven with strong and convincing evidence.

4. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF SHABU; PENALTY AND DAMAGES.—** We uphold accused-appellant's conviction of the offense charged. The penalty for unauthorized sale of shabu under Sec. 5, Art. II of R.A. 9165, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from PhP500,000 to PhP10,000,000. However, with the enactment of R.A. 9346, only life imprisonment and a fine shall be imposed. We, therefore, find that the penalty of life imprisonment and payment of fine in the amount of PhP500,000 is within the range provided by law.

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

TIJAM, *J.*:

Accused-appellant Stephan Cabiles y Suarez appeals the Decision[1] dated March 26, 2015 of the Court of Appeals (CA), finding him guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (R.A.) 9165, and sentencing him to suffer the penalty of life imprisonment, and to pay a fine of PhP 500,000.

The facts are as follows:

On November 3, 2005, an Information[2] for violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, was filed against accused-appellant for the illegal sale of methamphetamine hydrochloride commonly known as shabu, the accusatory portion of which reads as follows:

> That on or about the 31st day of October 2005, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to police poseur-buyer, PO1 Ian Piano, in a buy-bust operation, one (1) small heat-sealed transparent plastic packet containing methamphetamine hydrochloride or shabu, a dangerous drug, weighing 0.04 gram, in exchange for two (2) P100.00 bills in marked money, with Serial Nos. X681273 and JN653558, in violation of the aforementioned law.

When arraigned, accused-appellant pleaded not guilty to the crime charged. Trial ensued.

Evidence of the Prosecution

On October 20, 2005, SPO4 Ernesto Gonzales (SPO4 Gonzales) of the Office of Chief of Bacolod City Anti-Illegal

---

[1] Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez, *rollo,* pp. 4-17.

[2] CA Decision dated March 26, 2015, *id.* at 4-6.

Drugs-Special Operations Task Force (CAIDSOTG) received an information that a certain *"kano,"* herein accused-appellant, of Purok Narra Baybay, Barangay 8, Bacolod City, was engaged in the illegal sale of dangerous drugs.

On October 31, 2005, SPO4 Gonzales formed a team and conducted a briefing for a buy-bust operation against accused-appellant. PO1 Ian S. Piano (PO1 Piano), the designated poseur-buyer, was given two pieces of PhP100 bills as buy-bust money.

At around four o'clock in the afternoon, SPO4 Gonzales instructed the confidential informant to meet them at the lagoon of the Provincial Capitol Building on Lacson Street in Bacolod City. SPO4 Gonzales instructed the confidential informant to send a text message to the accused-appellant regarding the place where the sale of illicit drugs would take place. Thereafter, PO1 Piano, together with the confidential informant, proceeded to the agreed place at Purok Narra Baybay, Barangay 8, Bacolod City. Upon seeing the accused-appellant, the confidential informant approached him and asked if he had the shabu, to which the accused-appellant positively confirmed. PO1 Piano handed the buy-bust money to the accused-appellant, which he placed in his pocket. Accused-appellant in turn handed to PO1 Piano a plastic sachet. Immediately after the exchange, PO1 Piano called SPO4 Gonzales, as the pre-arranged signal that the sale was consummated. Thereafter, PO1 Piano placed the accused-appellant under arrest. While being frisked, police officers recovered the buy-bust money from his pocket.

Evidence for the Defense

Accused-appellant denied the charges against him. He alleged that at the time of the incident, he was at a *"sari-sari"* store buying rice and sardines, when suddenly three men were looking for a certain Pablo Bautista. Accused-appellant told the three men the location of the house of Pablo Bautista, but they frisked accused-appellant and placed him in handcuffs. Thereafter, accused-appellant was brought to police headquarters at Barangay Taculing, Bacolod City, and was subjected to a body search. But when nothing was recovered from him, suddenly a policeman

got an empty plastic sachet from his drawer, and a certain Police Officer Grijaldo took out from his pocket a PhP 200.00 bill, which was used as evidence in this case.

On May 2, 2013, the Regional Trial Court (RTC) rendered a Decision,[3] finding accused-appellant guilty beyond reasonable doubt of illegal sale of shabu, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered, as follows:
>
> (a) Finding Accused-Defendant **STEPHAN CABILES Y SUAREZ** alias "Kano" **GUILTY,** beyond moral certainty, of Section 5, Article II, Comprehensive Dangerous Drug Act of 2002. He is hereby sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);
>
> (b) The dangerous drug subject matter of this case (Exhibit 'H') is hereby confiscated in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency (PDEA), Regional Office Six (6) for destruction and,
>
> (c) No pronouncement as to cost.
>
> **SO ORDERED.**[4]

The CA upheld the conviction of accused-appellant in a Decision dated March 26, 2015. The *fallo* thereof provides:

> **WHEREFORE,** the Decision dated May 2, 2013 rendered by the Regional Trial Court, Branch 47, Bacolod City in Criminal Case No. 05-28532 convicting accused-appellant Stephan Cabiles y Suarez a.k.a. "Kano" of Violation of Section 5, Article II or R.A. 165 or the Comprehensive Dangerous Drugs Act is **AFFIRMED**.
>
> With costs against the accused-appellant.
>
> **SO ORDERED.**

---

[3] Penned by Acting Presiding Judge Raymond Joseph G. Javier, CA *rollo,* pp. 38-48.

[4] *Id.* at 48.

Hence, this appeal.

The appeal is unmeritorious.

In a prosecution for the illegal sale of dangerous drugs, such as shabu, the following elements must be duly established: (1) the identity of the buyer and seller, the object and the consideration; and, (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[5]

Here, the prosecution submitted evidence that duly established the elements of illegal sale of shabu. It was positively identified that the accused-appellant was the seller of the seized illegal substance which turned out. to be positive for methamphetamine hydrochloride, a dangerous drug. Accused-appellant sold and delivered the drug for PhP 200.00 to PO1 Piano. The act of accused-appellant of handing over the shabu after receiving the PhP 200.00 buy-bust money handed by PO1 Piano, is sufficient to consummate the sale of illegal drugs. Verily, all the elements of the sale of illegal drugs were established to warrant accused-appellant's conviction.

We cannot give credence to accused-appellant's argument that the failure of PO1 Piano to actually hear the conversation between the confidential informant and the accused-appellant casts doubt on the existence of a legitimate buy-bust operation. What is controlling is that the offense is consummated after accused-appellant handed the shabu to PO1 Piano in exchange for the PhP 200.00 buy-bust money.

We also find no merit in the accused-appellant's contention that there were procedural lapses in the chain of custody, particularly when he claimed that the prosecution failed to take a picture of the seized illegal substance in his presence and that the police officers merely presented a Barangay Certification from the Councilors of Barangay 8 of Bacolod City. Accused-

---

[5] *People of the Philippines v. Dela Cruz,* G.R. No. 193670, December 3, 2014, citing *People v. Bara,* G.R. No. 184808, November 14, 2011.

appellant argues that the integrity and evidentiary value of the seized illegal substance were not duly preserved.

We disagree. The prosecution was able to preserve the integrity and evidentiary value of the seized illegal substance. As correctly observed by the CA, PO1 Piano immediately put the markings "ISP" on the one heat-sealed transparent plastic sachet of shabu at the scene of operation and in the presence of the accused-appellant. Then, accused-appellant was brought to the Barangay Hall for inventory and for issuance of certification that a buy-bust operation was duly conducted. PO1 Piano prepared the letter request for laboratory examination and delivered the same together with seized illegal substance to the PNP Crime Laboratory. It yielded a positive result for methamphetamine hydrochloride, a dangerous drug, per Chemistry Report No. D-464-2005, and as testified by Police Senior Inspector Alexis A. Guinanao in open court. Therefore, the integrity and evidentiary value of the seized illegal substance from accused-appellant are shown to have been properly preserved and the crucial links in the chain of custody were shown to be unbroken.[6]

Moreover, the Court finds no compelling reason to doubt the veracity of the testimony of the prosecution witnesses. The testimonies of PO1 Piano and SPO4 Gonzales established beyond reasonable doubt accused-appellant's culpability. Their

---

[6] Section 21, Article II of R.A. 9165 and the Implementing Rules and Regulations, as to the doctrine of chain custody, it provides:

x x x x x x x x x

The integrity and evidentiary value of seized item is properly preserved for as long as the chain of custody of the same are duly established. Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in Court as evidence, and the final disposition. *People v. Glenn Salvador y Bal Verde and Dory Ann Parcon y Del Rosario,* G.R. No. 190621, February 10, 2014.

narrations on what transpired in the afternoon of October 20, 2005, from the moment the confidential informant disclosed the illegal activities of accused-appellant up to the time of his arrest dated October 31, 2005, deserve great respect and credence. The direct account of law enforcement officers enjoy the presumption of regularity in the performance of their duties. It should be noted that "unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit."[7] Thus, unless the presumption is rebutted, it becomes conclusive.[8] Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular. Time and again, this Court has accorded great weight to factual findings of the trial court, particularly as regards credibility of witnesses, for it had the opportunity to observe first hand the deportment and demeanor of witnesses and it was in a position to discern whether or not they were telling the truth.[9] Hence, the Court finds no error on the part of the RTC and CA in upholding the presumption of regularity in the performance of duty of the police officers who conducted the buy-bust operation. Anent the alleged irregularities pointed out by the accused-appellant, the same were without basis, too trivial and inconsequential, as explained above.

Finally, accused-appellant's defense of denial is inherently weak and viewed with disfavor for it can be easily concocted.[10] Denial cannot prevail against the positive testimony of a

---

[7] *People of the Philippines v. Brita,* G.R. No. 191260, November 24, 2014, citing *People v. Lim,* 615 Phil. 769, 782 (2009).

[8] *Bustillo, et al. v. People of the Philippines,* G.R. No. 160718, May 12, 2010.

[9] See *Giovani Serrani y Cervantes v. People of the Philippines,* G.R. No. 175023, July 5, 2010.

[10] See *People of the Philippines v. Dela Cruz,* G.R. No. 193670, December 3, 2014, citing *People v. De Jesus,* G.R. No. 198794, February 6, 2013.

prosecution witness. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.[11] For this defense to succeed, it must be proven with strong and convincing evidence.[12] Accused-appellant failed in this regard.

In view of the foregoing, We uphold accused-appellant's conviction of the offense charged. The penalty for unauthorized sale of shabu under Sec. 5, Art. II of R.A. 9165,[13] regardless of its quantity and purity, is life imprisonment to death and a fine ranging from PhP500,000 to PhP 10,000,000. However, with the enactment of R.A. 9346,[14] only life imprisonment and a fine shall be imposed. We, therefore, find that the penalty of life imprisonment and payment of fine in the amount of PhP 500,000 is within the range provided by law.

WHEREFORE, the appeal is **DISMISSED.** The Decision dated March 26, 2015 of the Court of Appeals, finding accused-appellant Stephan Cabiles y Suarez guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No.

---

[11] *People v. Glenn Salvador y Bal Verde and Dory Ann Parcon y Del Rosario,* G.R. No. 190621, February 10, 2014, citing *People v. Alberto,* G.R. No. 179717, February 5, 2010.

[12] *People of the Philippines v. Dela Cruz,* G.R. No. 193670, December 3, 2014, citing *People v. De Jesus,* G.R. No. 198794, February 6, 2013.

[13] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed on any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[14] "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES."

9165, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of PhP500,000 is hereby **AFFIRMED.**

SO ORDERED.

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

Martires,[*] *J.*, on leave.

THIRD DIVISION

[G.R. No. 223334. June 7, 2017]

DANILO BARTOLATA, represented by his Attorney-in-Fact REBECCA R. PILOT and/or DIONISIO P. PILOT, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, and TOLL REGULATORY BOARD,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC LAND ACT (CA NO. 141); SECTION 112 PROVISION THAT THE GOVERNMENT IS ENTITLED TO AN EASEMENT OF RIGHT OF WAY WITHOUT NEED OF PAYMENT FOR JUST COMPENSATION; APPLICABLE TO LAND ACQUIRED VIA PUBLIC AUCTION AWARDED BY THE BUREAU OF LANDS DATED DECEMBER 14, 1987.— As sole bidder during a public auction, petitioner Danilo Bartolata, acquired ownership over a 400 square meter parcel of land identified as Lot 5, Blk. 1, Phase 1, AFP Officer's Village, Taguig, Metro

[*] Designated as Additional Member as per Raffle dated March 15, 2017.

Manila by virtue of an Order of Award from the Bureau of Lands dated December 14, 1987. x x x Sometime in 1997, respondents acquired 223 square meters of petitioner's property for the development of the Metro Manila Skyway Project. x x x [T]he Order of Award from the Bureau of Lands granting title to petitioner over the subject property contained the following encumbrance: x x x **2. The land shall be subject to the easement and servitudes provided for in Section 109-114 of Commonwealth Act No. 141, as amended.** [Thus,] pursuant to Section 112 of Commonwealth Act No. 141 (CA 141), the government is entitled to an easement of right of way not exceeding 60 meters in width, without need of payment for just compensation, save for the value of improvements existing. x x x [P]etitioner [however,] contended that Presidential Decree No. 2004 (PD 2004), which amended Republic Act No. 730 (RA 730), allegedly removed the statutory lien attached to the subject property. x x x **[The Court ruled,] [t]he easement of right of way in favor of the government subsists despite the enactment of PD 2004.** x x x ***First,*** no less than the Order of Award granting petitioner title over the subject property reads that the parcel of land conferred to him is subject to the restrictions contained under Sec. 109-114 of CA 141, which necessarily includes the easement provided in Sec. 112. x x x ***Second,*** x x x [RA 730] only cover the sale of public lands for residential purposes and to qualified applicants **without public auction**. x x x [T]he definite ambit of the law could not be extended to sales of public lands via public auction, through which mode of disposition petitioner acquired the subject property. Consequently, when RA 730 was amended by PD 2004 to the effect of removing encumbrances and restrictions on purchased properties without public auction, petitioner could not have benefitted from the same.

2. **ID.; ID.; ID.; WHEN PROPERTY OWNER IS ENTITLED TO JUST COMPENSATION FOR THE REMAINING PROPERTY UNDER SEC 112 OF CA 141.—** [T]wo elements must concur before the property owner will be entitled to just compensation for the remaining property under Sec. 112 of CA 141: (1) that the remainder is not subject to the statutory lien of right of way; and (2) that the enforcement of the right of way results in the practical destruction or material impairment of the value of the remaining property, or in the property owner

being dispossessed or otherwise deprived of the normal use of the said remainder.

3. **ID.; ID.; ID.; RETURN OF INITIAL PAYMENT ALREADY AWARDED AS JUST COMPENSATION BARRED BY THE DOCTRINE OF ESTOPPEL IN CASE AT BAR.—** Anent the ₱1,480,000 partial payment already made by respondents, such amount paid shall be governed by the provisions on *solutio indebiti* or unjust enrichment. x x x [But] regardless, respondents' action to compel petitioner to return what was mistakenly delivered is now barred by the doctrine of estoppel. The doctrine is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. As a general rule, the State cannot be barred by estoppel by the mistakes or errors of its officials or agents. But as jurisprudence elucidates, the doctrine is subject to exceptions, x x x. In this case, petitioner was erroneously paid ₱1,480,000 on August 14, 1997 when respondents appropriated the amount in his favor. However, because of respondents' representation that the amount was a mere downpayment for just compensation, petitioner never objected to the taking of his land and peacefully parted with his property, expecting to be paid in full for the value of the taken property thereafter. As the events unfolded, respondents did not make good their guarantee. Instead, they would claim for the recovery of the wrongful payment after almost twelve (12) years, on July 9, 2009, as a counterclaim in their Supplemental Answer. Indubitably, respondents are barred by estoppel from recovering from petitioner the amount initially paid.

APPEARANCES OF COUNSEL

David B. Agoncillo for petitioner.
Office of the Solicitor General for respondents.

DECISION

VELASCO, JR., *J.*:

Nature of the Case

Before the Court is a Petition for Review on Certiorari assailing the Decision[1] and Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 100523, dated July 10, 2015 and March 7, 2016, respectively. The challenged rulings denied petitioner's claim for just compensation on the ground that the portion of his property that was used by the government was subject to an easement of right of way. Additionally, the CA ordered petitioner to return any payment made to him by the government in relation to the enforcement of the easement.

The Facts of the Case

Petitioner Danilo Bartolata acquired ownership over a 400 square meter parcel of land identified as Lot 5, Blk. 1, Phase 1, AFP Officer's Village, Taguig, Metro Manila by virtue of an Order of Award from the Bureau of Lands dated December 14, 1987.[2] It appears from the Order of Award that petitioner was the sole bidder for the property during a public auction conducted on August 14, 1987,[3] with the offer of ₱15 per square meter or ₱6,000 total for the 400 square meter lot.[4]

Sometime in 1997, respondents acquired 223 square meters of petitioner's property for the development of the Metro Manila Skyway Project. The parties agreed that in exchange for the acquisition, petitioner would be paid just compensation for the appraised value of the property, fixed at ₱55,000 per square meter or an aggregate of ₱12,265,000 for the entire affected

---

[1] Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Stephen C. Cruz and Manuel M. Barrios.

[2] *Rollo*, p. 118.

[3] *Id*. at 125.

[4] *Id*. at 140-141.

area by the Municipal Appraisal Committee of Taguig, Metro Manila.[5] Subsequently, on August 14, 1997, respondents appropriated ₱1,480,000 in favor of petitioner as partial payment.

Since the date of initial payment, petitioner had, on numerous occasions, demanded from respondents the balance of Php10,785,000.00, but the latter refused to settle their outstanding obligation. This prompted petitioner to file, on September 20, 2006, a Complaint[6] for a sum of money with the Regional Trial Court (RTC), Branch 166 in Pasig City, docketed as Civil Case No. 70969.[7]

In their Supplemental Answer, dated July 9, 2009, respondents raised that the Order of Award from the Bureau of Lands granting title to petitioner over the subject property contained the following encumbrance:

> This award shall further be subject to the provisions of the Public Land Law (Commonwealth Act No. 141, as amended), and particularly the following conditions:
>
> x x x x x x x x x
>
> **2. The land shall be subject to the easement and servitudes provided for in Section 109-114 of Commonwealth Act No. 141, as amended.**[8] (emphasis added)

Respondents then argued that pursuant to Section 112 of Commonwealth Act No. 141 (CA 141),[9] the government is entitled to an easement of right of way not exceeding 60 meters in width, without need of payment for just compensation, save

---

[5] *Id.* at 134.

[6] *Id.* at 77.

[7] Entitled *"Danilo Bartolata, rep. by Atty. In Fact Rebecca P. Pilot & Dionisio P. Pilot vs. Republic of the Philippines, Department of Public Works and Highways, Department of Transportation and Communications, and Toll Regulatory Board."*

[8] *Rollo*, p. 141.

[9] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN, approved on November 7, 1936.

for the value of improvements existing. The pertinent provision reads:

SECTION 112. Said land shall further be subject to a right-of-way not exceeding sixty (60) meters in width **for public highways**, railroads, irrigation ditches, aqueducts, telegraph and telephone lines and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require for carrying on their business, **with damages for the improvements only.** (emphasis added)

Under the above-cited provision, any payment for the government's use of the easement, unless made to compensate the landowner for the value of the improvements affected, is unwarranted. Consequently, respondents prayed, by way of counterclaim, that the ₱1,480,000 partial payment made to petitioner for the acquisition of the latter's property, which was well within the 60-meter threshold width, be returned to the government.

In rebuttal, petitioner contended that Presidential Decree No. 2004 (PD 2004),[10] which amended Republic Act No. 730 (RA 730),[11] allegedly removed the statutory lien attached to the subject property. Sec. 2 of RA 730, as amended, now reads:

SEC. 2. Lands acquired under the provisions of this Act shall not be subject to any restrictions against encumbrance or alienation before and after the issuance of the patents thereon.

Respondents, however, countered that petitioner could not have benefited from PD 2004 since the removal of restrictions

---

[10] AMENDING SECTION TWO OR REPUBLIC ACT NUMBERED SEVEN HUNDRED AND THIRTY RELATIVE TO THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS, dated December 30, 1985.

[11] AN ACT TO PERMIT THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS, approved on June 18, 1952.

and encumbrances contained in PD 2004 only applies to public land sold by the government for residential purposes without public auction, whereas petitioner was awarded the subject property through a public auction sale.

Ruling of the RTC

On November 28, 2012, the RTC promulgated its Decision in Civil Case No. 70969 disposing the case in the following wise:

> **WHEREFORE,** premises considered, judgment is hereby rendered dismissing plaintiff's complaint for lack of merit and insufficiency of evidence.
>
> Defendant's counterclaims are likewise denied and dismissed for insufficiency of evidence.
>
> No pronouncement as to costs.
>
> **SO ORDERED.**[12]

Giving credence to respondents' postulation, the RTC ruled that PD 2004 could not have removed the encumbrances attached to petitioner's property since the law does not cover public lands sold through auction. The RTC, therefore, ruled that the government is entitled to a 60-meter width right of way on the property, for which it is not entitled to pay just compensation under Sec. 112 of CA 141.[13]

Nevertheless, the RTC found no reason to grant respondents' counterclaim. In ruling that petitioner is not under obligation to return the initial payment made, the RTC considered the fact that respondents effectively entered into a contract of sale with petitioner for the acquisition of the piece of land to be used for the Metro Manila Skyway Project, which contract of sale was consummated by respondents' partial payment.[14] By virtue of this consummated contract of sale, so the RTC further

---

[12] *Rollo*, p. 126.

[13] *Id*. at 123.

[14] *Id*. at 125.

ratiocinated, petitioner never opposed the taking of his property. He was made to believe, as he did in fact believe, that he will be paid just compensation as agreed upon by the parties. It cannot then be said that petitioner was illegally paid when he transacted with the government in good faith and when he relied on respondents' representations that he is entitled to just compensation.

Ruling of the CA

On appeal, the CA modified the RTC ruling thusly:

> **WHEREFORE**, premises considered, plaintiff-appellant's appeal is **DENIED**. On the other hand, defendants' appeal is **GRANTED**. Accordingly, the Decision dated November 28, 2012 of Branch 166, Regional Trial Court of Pasig City in Civil Case No. 70969 is hereby **AFFIRMED** with the **MODIFICATION** that plaintiff-appellant is ordered to return the amount of Php1,480,000.00 to the Republic of the Philippines.
>
> **SO ORDERED.**[15]

The appellate court affirmed the RTC's finding that the subject property is still subject to the easement of right of way, which is free of any compensation, except only for the value of the existing improvements that may have been affected. Echoing the RTC's line of reasoning, the CA ruled that PD 2004 could not be extended to benefit petitioner who acquired the subject property through an auction sale. The lot in issue is, therefore, subject to the statutory lien embodied in Sec. 112 of CA 141.

Further upholding the government's right to enforce against petitioner's property the easement for public highways without cost, the CA granted respondents' counterclaim on appeal. The CA noted that the portion of petitioner's property that was used by respondents corresponds to the widths of 13.92 meters and 13.99 meters, well within the 60-meter limit under CA 141.[16] Given that respondents never exceeded the threshold width,

---

[15] *Id*. at 146.

[16] *Id*. at 143-144.

and that petitioner never established that there were improvements in his property that were affected, the CA held that petitioner is not entitled to any form of compensation. Consequently, the CA ordered him to return the ₱1,480,000 partial payment made, lest he be unjustly enriched by respondents' use of the legal easement that under the law should have been free of charge.

Aggrieved, petitioner moved for reconsideration of the appellate court's Decision, which motion was denied by the CA through its March 7, 2016 Resolution. Hence, petitioner elevated the case to this Court.

The Issues

In the instant recourse, petitioner raises the following issues:

1. THE HONORABLE COURT OF APPEALS SERIOUSLY/ GRAVELY COMMITTED AN ERROR IN LAW AND WITH THE ESTALISHED/ACCEPTED JURISPRUDENCE IN UPHOLDING AND SUSTAINING THE DECISION DATED 28 NOVEMBER 2012 OF THE HONORABLE REGIONAL TRIAL COURT BRANCH 166 OF PASIG CITY IN RULING THAT THE PROVISIONS OF PRESIDENTUIAL DECREE NO. 2004 IS INAPPLICABLE OVER THE SUBJECT PARCEL OF LAND OF PETITIONER.

2. THE HONORABLE COURT OF APPEALS SERIOUSLY/ GRAVELY COMMITTED AN ERROR IN LAW AND WITH THE ESTABLISHED/ACCEPTED JURISPRUDENCE IN UPHOLDING AND SUSTAINING THE DECISION DATED 28 NOVEMBER 2012 OF THE HONORABLE REGIONAL TRIAL COURT BRANCH 166 OF PASIG CITY IN RULING THAT THE PROVISIONS OF COMMONWEALTH ACT NO. 141 APPLIES AS ENCUMBRANCE OVER THE SUBJECT PARCEL OF LAND OF PETITIONER.

x x x x x x x x x

3. THE HONORABLE COURT OF APPEALS SERIOUSLY/ GRAVELY COMMITED AN ERROR IN LAW AND WITH THE ESTABLISHED/ACCEPTED JURISPRUDENCE IN UPHOLDING AND SUSTAINING THE DECISION DATED 28 NOVEMBER 2012 OF THE HONORABLE REGIONAL TRIAL COURT BRANCH 166 OF PASIG CITY IN RULING

THAT PETITIONER IS NOT ENTITLED TO BE PAID THE BALANCE OF JUST COMPENSATION IN THE AMOUNT OF TEN MILLION SEVEN HUNDRED EIGHTY-FIVE THOUSAND PESOS, (Php10,785,000.00) WITH LEGAL INTEREST COMMENCING FROM ACTUAL TAKING OF PROPERTY ON 14 AUGUST 1997 UNTIL FULLY PAID.

4. THE HONORABLE COURT OF APPEALS SERIOUSLY/GRAVELY COMMITTED AN ERROR IN LAW AND WITH THE ESTABLISHED/ACCEPTED JURISPRUDENCE IN UPHOLDING AND SUSTAINING THE DECISION DATED 28 NOVEMBER 2012 OF THE HONORABLE REGIONAL TRIAL COURT BRANCH 166 OF PASIG CITY IN RULING THAT THE PARTIAL PAYMENT MADE BY RESPONDENT IN THE AMOUNT OF ONE MILLION FOUR HUNDRED EIGHTY THOUSAND PESOS (Php1,480,000.00), BE RETURNED BY PETITIONER TO RESPONDENT.

5. ASSUMING WITHOUT ADMITTING AND FOR THE SAKE OF ARGUMENT THAT THE SUBJECT PARCEL OF LAND LAWFULLY OWNED BY PETITIONER IS SUBJECT TO THE PROVISIONS OF COMMONWEALTH ACT NO. 141 WITH THE SIXTY (6) METERS ENCUMBRANCE OF RIGHT OF WAY, PETITIONER SHOULD STILL BE ENTITLED TO THE DIFFERENCE OF ONE HUNDRED SIXTY-THREE SQUARE METERS, (163 sq.m.), OUT OF THE TWO HUNDRED TWENTY-THREE SQUARE METERS (223 sq.m.) TAKEN BY RESPONDENT FOR THE USE OF THE METRO MANILA SKYWAY PROJECT, TO WHICH JUST COMPENSATION THERETO MUST AND SHOULD BE PAID BY RESPONDENT TO PETITIONER.[17]

To simplify, the Court is faced with the same issues that confronted the CA, to wit:

1. Whether or not the subject property owned by petitioner is subject easement of right of way in favor of the government;

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

2. Whether or not respondents are liable to pay just compensation to petitioner; and

3. Whether or not petitioner should return the initial payment made by respondents in the amount of ₱1,480,000.

Petitioner maintains that RA 730 relaxed the mode of acquiring public land, from the strict method of public auction to the more lenient non-auction sale. Thus, petitioner postulates that the CA's interpretation of PD 2004––that only public lands sold without auction sale are covered by the decree's removal of encumbrance––would lead to a scenario wherein properties acquired through the more stringent process would be subjected to more restrictions than those acquired through the more relaxed means.[18] Petitioner, therefore, submits that PD 2004 should be interpreted to cover all government sales of public land, with or without auction.

Furthermore, petitioner cites his constitutional right to just compensation in exchange for public property taken for public use.[19] He laments that as early as August 14, 1997, respondents have deprived him of his ownership rights over more than half of his property for the development of the Metro Manila Skyway Project. For 19 years and counting, the government has been enjoying full use of 223 square meters of his parcel of land, all the while denying petitioner payment for just compensation, resulting in the violation of his constitutionally enshrined right.[20]

---

[18] *Id*. at 55.

[19] CONSTITUTION, Art. III, Sec. 9. Private property shall not be taken for public use without just compensation.

[20] *Rollo*, pp. 57-60; citing the expropriation cases of *Republic v. Lim*, G.R. No. 161656, June 29, 2005, 462 SCRA 265, *Republic v. Salem Investments Corporation*, G.R. No. 137569, June 23, 2000, 334 SCRA 320, *Heirs of Saguitan v. City of Mandaluyong*, G.R. No. 135087, March 14, 2000, 328 SCRA 137, *Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, *Coscuella v. Court of Appeals*, G.R. No. 77765, August 15, 1988, 164 SCRA 393, *Visayan Refining Co. v. Camus and Paredes*, 40 Phil. 550 (1919), *Manila Railroad v. Velasquez*, 32 Phil. 286 (1915).

Petitioner, therefore, prays that respondents be directed to pay the balance of ₱10,785,000 pursuant to the parties' covenant, plus legal interest.

In connection with the foregoing, petitioner asserts that he could not be held liable to return the initial payment made by respondents in the amount of ₱1,480,000. This amount, to petitioner, constitutes part and parcel of the just compensation he is legally entitled to for the government's use of his private property. Respondents' payment was then not tainted with illegality for which petitioner may be held liable for its return.

Assuming for the sake of argument that petitioner illegally obtained payment, petitioner claims that respondents are barred from recovering the same as they themselves are *in pari delicto*.[21] Being the same parties who cajoled petitioner into parting with his property in the promise of being paid the appraised value and who did, in fact, make such payment, albeit partial, respondents could no longer recover what they have already paid. To sustain the CA's finding that petitioner ought to return the downpayment would be tantamount not only to allowing respondents to abscond liability for paying the balance, but also to virtually allowing the government to rob petitioner of his property through machinations.[22]

Lastly, petitioner claims that in the alternative, even if the property awarded to him by the Bureau of Lands is subject to the easement under Sec. 112 of CA 141, he is still entitled to just compensation in the amount of ₱8,959,000, representing 163 sq.m. (223 sq.m. taken property less the 60 sq.m. easement) multiplied by the appraised value of the property of ₱55,000 per square meter. Deducting the initial payment made from the aggregate amount would leave respondents' total unpaid balance in the amount of ₱7,485,000, plus legal interest, as per petitioner's computation.[23]

---

[21] *Id*. at 66-67.

[22] *Id*. at 66-68.

[23] *Id*. at 69.

The Court's Ruling

The petition is partly meritorious.

The easement of right of way in favor of the government subsists despite the enactment of PD 2004

Resolving the first issue, the Court rejects petitioner's claim that the subject property is no longer subject to the 60-meter width easement of right of way in favor of the government.

First, no less than the Order of Award granting petitioner title over the subject property reads that the parcel of land conferred to him is subject to the restrictions contained under Secs. 109-114 of CA 141, which necessarily includes the easement provided in Sec. 112. Notably, petitioner was awarded the subject property in 1987, while PD 2004, which allegedly removed all encumbrances and restrictions from awarded properties, was signed into law much earlier in 1985. This alone raises suspicion on the applicability of PD 2004 to the subject property.

Second, the Court finds no reversible error in the RTC and CA's interpretation of the coverage of PD 2004 and RA 730. The title of RA 730 itself supports the rulings of the courts *a quo* that the laws petitioner relied upon only cover the sale of public lands for residential purposes and to qualified applicants **without public auction**. To quote:

> REPUBLIC ACT NO. 730 – AN ACT TO PERMIT THE **SALE <u>WITHOUT</u> PUBLIC AUCTION** OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS (emphasis added)

It can readily be inferred from the title of RA 730 that the definite ambit of the law could not be extended to sales of public lands via public auction, through which mode of disposition petitioner acquired the subject property. Consequently, when RA 730 was amended by PD 2004 to the effect of removing encumbrances and restrictions on purchased properties without

public auction, petitioner could not have benefitted from the same.

Lastly, even the contents of RA 730 belie petitioners claim. The foremost section of the law reads:

Section 1. **Notwithstanding the provisions of sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one**, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten per cent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments. (emphasis added)

As can be gleaned, RA 730 was crafted as an exception to Secs. 61[24] and 67[25] of CA 141. These provisions govern the mode of disposition of the alienable public lands enumerated

---

[24] **SECTION 61.** The lands comprised in classes (a), (b), and (c) of section fifty-nine shall **be disposed of to private parties by lease only** and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture and Commerce, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) **may be disposed of by sale or lease under the provisions of this Act.** (emphasis added)

[25] **SECTION 67. The lease or sale shall be made through oral bidding; and adjudication shall be made to the highest bidder.** However, where an applicant has made improvements on the land by virtue of a permit issued to him by competent authority, the sale or lease shall be made by sealed bidding as prescribed in section twenty-six of this Act, the provisions of which shall be applied wherever applicable. If all or part of the lots remain unleased or unsold, the Director of Lands shall from time to time announce in the Official Gazette or in any other newspapers of general circulation, the lease or sale of those lots, if necessary. (emphasis added)

under Sec. 59 of the same law.[26] Synthesizing the provisions, CA 141 provides that public lands under Sec. 59 can only be disposed for residential, commercial, industrial, and other similar purposes through lease or sale, in both cases, *"to the highest bidder."* The conduct of an auction is then required under Secs. 61 and 67.

By way of exception, however, RA 730 now allows the sale of public lands **without public auction** to qualified applicants.[27] It is through this exceptional case of purchase of public land without public auction wherein PD 2004 would apply.

Petitioner's assertion that both sales of public land with and without public auction are subsumed under the coverage of PD 2004 is contrary to the very tenor of the law. Sec. 2 of RA 730, as amended by PD 2004, is clear and unambiguous:

> **SEC. 2. Lands acquired <u>under the provisions of this Act</u>** shall not be subject to any restrictions against encumbrance or alienation before and after the issuance of the patents thereon. (emphasis added)

Under its plain meaning, only public lands acquired by qualified applicants without public auction and for residential purposes are free from any restrictions against encumbrance or alienation. The provision is inapplicable to petitioner's property which was awarded to petitioner not in accordance with RA 730, but through public auction.

What is more, the easement of right of way under Sec. 112 of CA 141 is not subsumed in the phrase *"restrictions against encumbrance or alienation"* appearing in the amendment

---

[26] SECTION 59. The lands disposable under this title shall be classified as follows:

(a) Lands reclaimed by the Government by dredging, filing, or other means;

(b) Foreshore;

(c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

(d) Lands not included in any of the foregoing classes.

[27] RA 730, Sec. 1.

introduced by PD 2004. This becomes obvious upon examining the original text of Sec. 2 of RA 730, before PD 2004 took effect:

> Sec. 2. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under the provisions of this act shall not be subject to encumbrance or alienation before the patent is issued and for a term of ten years from the date of the issuance of such patent, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of the said period. No transfer or alienation made after the said period of ten years and within fifteen years from the issuance of such patent except those made by virtue of the right of succession shall be valid unless when duly authorized by the Secretary of Agriculture and Natural Resources and the transferee of vendee is a Filipino citizen. Every convenyance made shall be subject to repurchase by the original purchaser or his legal heirs within a period of five years from the date of conveyance.
>
> Any contract or agreement made or executed in violation of this section shall be void *ab initio*.

Consequently, it was erroneous for petitioner to harp on Sec. 2 of RA 730, as amended by PD 2004, in his bid to unshackle his property from its servient state, to release it from the statutory lien prescribed under Sec. 112 of CA 141.

Petitioner is not entitled to just compensation

The Court now determines how the subsisting easement of right of way in favor of the government bears on petitioner's entitlement to just compensation. In resolving petitioner's principal claim, we apply the doctrine in *Republic v. Andaya (Andaya)*.[28]

The seminal case of *Andaya* likewise involved property subject to the statutory lien under Sec. 112 of CA 141. As held in the case:

> It is undisputed that there is a legal easement of right-of-way in favor of the Republic. Andaya's transfer certificates of title contained the reservation that the lands covered thereby are subject to the provisions of the Land Registration Act and the Public Land Act.

---

[28] G.R. No. 160656, June 15, 2007, 524 SCRA 671.

Section 112 of the Public Land Act provides that lands granted by patent shall be **subject to a right-of-way not exceeding 60 meters in width for public highways**, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, **free of charge, except only for the value of the improvements** existing thereon that may be affected. In view of this, the Court of Appeals declared that **all the Republic needs to do is to enforce such right without having to initiate expropriation proceedings and without having to pay any just compensation**. **Hence, the Republic may appropriate the 701 square meters necessary for the construction of the floodwalls without paying for it.**[29] (emphasis added)

The Court affirmed the CA's interpretation of Sec. 112 of CA 141 and ruled that the Republic was under no obligation to pay therein respondent Andaya just compensation in enforcing its right of way. Be that as it may, the Court did not foreclose the possibility of the property owner being entitled to just compensation if the enforcement of the right of way resulted in the "*taking*" of the portions **not** subject to the legal easement.

Jurisprudence teaches us that *"taking,"* in the exercise of the power of eminent domain, *"occurs not only when the government actually deprives or dispossesses the property owner of his property or of its ordinary use, but also when there is a practical destruction or material impairment of the value of his property."*[30] As in *Andaya*, even though the Republic was not legally bound to pay just compensation for enforcing its right of way, the Court nevertheless found that its project to be undertaken––the construction of floodwalls for Phase 1, Stage 1 of the Lower Agusan Development Project––would prevent ingress and egress in Andaya's private property and turn it into a catch basin for the floodwaters coming from the Agusan River, effectively depriving him of the normal use of the remainder of his property. To the mind of the Court, this resulted in a

---

[29] *Id*. at 675-676.

[30] *Id*. at 676; citing *Republic v. Court of Appeals*, G.R. No. 147245, March 31, 2005, 454 SCRA 516, 536 and *Ansaldo v. Tantuico, Jr*., G.R. No. 50147, August 3, 1990, 188 SCRA 300, 304.

"*taking*" of what was left of Andaya's property, entitling him to consequential damages, awarded by the Court in the form of just compensation.

To demonstrate in concrete terms, the property involved in *Andaya* contained a total area of 10,380 square meters, which can be divided in the following manner:

i. The 4,443 square meter portion subject to the easement of right of way, which can further be subdivided into two:

a. The 701 square meter portion corresponding to total area of the 10-meter easement actually utilized by the Republic; and

b. The 3,742 square meter portion corresponding to the unutilized area of the portion subject to the 60-meter width easement; and

ii. The remainder 5,937 square meter portion not subject to the government's easement of right of way.

The 701 square meter easement in *Andaya* was the site for the floodwall project. This was the extent of the right of way enforced by the government. The Court affirmed the CA ruling that the Republic may acquire the 701 square meter property free of charge, save only for the value of the improvements that may be affected.

As previously discussed, the floodwall project on the 701 square meter property would have deprived Andaya of the normal use of the remainder, i.e., both the 3,742 and the 5,937 square meter residual portions. But of the two, the Court held that Andaya is entitled to just compensation only for the 5,937 square meter span. The Court ratiocinated that though unutilized, the 3,742 square meter portion is still covered by Sec. 112 of CA 141 that limits the property owner's compensation to the value of the improvements, not of the value of the property per se.

To recapitulate, two elements must concur before the property owner will be entitled to just compensation for the remaining property under Sec. 112 of CA 141: (1) that the remainder is not subject to the statutory lien of right of way; and (2) that the

enforcement of the right of way results in the practical destruction or material impairment of the value of the remaining property, or in the property owner being dispossessed or otherwise deprived of the normal use of the said remainder.

This doctrine in *Andaya* was reiterated in the recent *Republic v. Regulto*.[31] We now apply the same parameters for determining petitioner's entitlement to just compensation in the case at bar.

Recall that the subject property in this case is a 400 square meter parcel of land. The 223 square meter portion of the subject property was traversed by respondents' Metro Manila Skyway Project. And as noted by the CA, the subdivision plan shows that the covered area corresponds to the widths of 13.92 meters and 13.99 meters, well within the 60-meter width threshold provided by law. Respondents are then not under any legal obligation to pay just compensation for utilizing the 223 square meter portion pursuant to the Republic's right of way under Sec. 112 of CA 141, and in accordance with our ruling in *Andaya*.

Anent the remaining 177 square meters of the 400 square meter lot, suffice it to state that it was never proved that the said area was not subject to the statutory lien. Neither was it established that despite not having been utilized for the Metro Manila Skyway Project, the enforcement of the easement resulted in the *"taking"* of the remaining property all the same. There is then no evidentiary basis for awarding petitioner just compensation, as correctly ruled by the RTC and the CA. However, petitioner remains the owner of the said 177 square meters and can fully exercise all the rights of ownership over the same.

Respondents are barred by estoppel from recovering the initial payment of ₱1,480,000 from petitioner

Guilty of reiteration, Sec. 112 of CA 141 precludes petitioner from claiming just compensation for the government's enforcement of its right of way. The contract allegedly entered

---

[31] G.R. No. 202051, April 18, 2016, 790 SCRA 1.

by the parties for the government's acquisition of the affected portion of the property in exchange for just compensation is then void *ab initio* for being contrary to law.[32] Consequently, petitioner has no right to collect just compensation for the government's use of the 223 square meter lot. Anent the ₱1,480,000 partial payment already made by respondents, such amount paid shall be governed by the provisions on *solutio indebiti* or unjust enrichment.

"*Solutio indebiti*" arises when something is delivered through mistake to a person who has no right to demand it. It obligates the latter to return what has been received through mistake. As defined in Article 2154 of the Civil Code,[33] the concept has two indispensable requisites: *first*, that something has been unduly delivered through mistake; and *second*, that something was received when there was no right to demand it.[34]

As discussed above, petitioner was never entitled to collect and receive just compensation for the government's enforcement of its right of way, including the ₱1,480,000 payment made by respondents. For its part, the government erroneously made payment to petitioner because of its failure to discover earlier on that the portion of the property acquired was subject to a statutory lien in its favor, which it could have easily learned of upon perusal of petitioner's Order of Award. These circumstances satisfy the requirements for *solutio indebiti* to apply.

Regardless, respondents' action to compel petitioner to return what was mistakenly delivered is now barred by the doctrine

---

[32] **Article 1409.** The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy.

[33] **Article 2154.** If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[34] *Metropolitan Bank & Trust Company v. Absolute Management Corporation*, G.R. No. 170498, January 9, 2013, 688 SCRA 225, 238.

of estoppel. The doctrine is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case.[35]

As a general rule, the State cannot be barred by estoppel by the mistakes or errors of its officials or agents. But as jurisprudence elucidates, the doctrine is subject to exceptions, viz:

> Estoppels against the public are little favored. They should not be invoked except [in rare] and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. **Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations** . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.[36]

In this case, petitioner was erroneously paid ₱1,480,000 on August 14, 1997 when respondents appropriated the amount in his favor. However, because of respondents' representation that the amount was a mere downpayment for just compensation, petitioner never objected to the taking of his land and peacefully parted with his property, expecting to be paid in full for the value of the taken property thereafter. As the events unfolded, respondents did not make good their guarantee. Instead, they would claim for the recovery of the wrongful payment after almost twelve (12) years, on July 9, 2009, as a counterclaim in their Supplemental Answer. Indubitably, respondents are barred

---

[35] *Megan Sugar Corporation v. Regional Trial Court of Iloilo, Branch 68, Dumangas, Iloilo*, G.R. No. 170352, June 1, 2011, 650 SCRA 100, 110.

[36] *Republic v. Court of Appeals*, G.R. No. 116111, January 21, 1999, 301 SCRA 366, 377; citing 31 CJS 675-676.

by estoppel from recovering from petitioner the amount initially paid. A modification of the assailed CA ruling is, therefore, in order.

WHEREFORE, premises considered, the Court resolves to **PARTIALLY GRANT** the petition. The award to respondents for the recovery of the ₱1,480,000 initial payment is hereby **DELETED** as their right to a refund has already prescribed. Petitioner Danilo Bartolata remains the owner of the 177 square meter portion and can exercise all rights of ownership over the said lot.

SO ORDERED.

*Bersamin, Reyes, Perlas-Bernabe,** and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 224300. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE CUTARA *y* BRIX,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To secure a conviction for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. The prosecution must also prove the illegal sale of the dangerous drugs and present the *corpus delicti* in court as evidence.

---

* Additional Member per raffle dated February 15, 2017.

2. ID.; ID.; CHAIN OF CUSTODY; LINKS TO ESTABLISH THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION.— In a buy-bust operation, the following links are necessary in order to establish the chain of custody; (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court. x x x Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.

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

TIJAM, *J.*:

For review is the Decision[1] dated April 28, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06568, which affirmed *in toto* the Decision[2] dated April 25, 2012 of the Regional Trial Court (RTC) of Manila, Branch 53, in Criminal Case No. 03-216994, finding the accused-appellant Jose Cutara y Brix guilty of violation of Section 5,[3] Article II of Republic Act (RA) No.

---

[1] Penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Samuel H. Gaerlan and Pedro B. Corales; *rollo*, pp. 2-13.

[2] Penned by Judge Arthur L. Abundiente; CA *rollo,* pp. 57-66.

[3] Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person,

9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On July 31, 2003, acting on an information on the alleged sale of shabu by accused-appellant in Parola Compound, Tondo, Manila, Police Senior Inspector Raymund Liguden (PSI Liguden), Chief of the District Detective Beat Patrol Unit (DDBPU) of the Western Police District (WPD), formed a team composed of PO3 Solomon Marcial (PO3 Marcial), PO2 Nelson Geronimo (PO2 Geronimo), PO1 Christopher Palapal and PO1 Severino Melad to undertake a buy-bust operation with PO1 Marcial as poseur-buyer using two pieces of PhP200 pesos bills marked with "X."[5]

Thereafter, they contacted a confidential informant to assist them in validating the said information. The confidential informant then told the police officers that he personally knew the accused-appellant and that he was willing to help them in apprehending the latter.[6]

On the same day, at around 1:30 p.m., the buy-bust team, together with the confidential informant, proceeded to the target area. The team parked their vehicle around 200 meters away from the target area. PO3 Marcial and the confidential informant walked towards Parola Compound - Area B where they saw a man standing in a corner who seemed to be waiting for somebody. The confidential informant told PO3 Marcial that the said man

---

who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[5] *Rollo*, pp. 4-5.

[6] *Id.* at 4.

was Cutara. When they approached accused-appellant, the confidential informant nodded his head and introduced PO3 Marcial as a buyer of shabu. Accused-appellant then asked how much and PO3 Marcial replied PhP200 worth of shabu. PO3 Marcial then handed to accused-appellant the marked money while the latter handed over to PO3 Marcial a transparent plastic sachet containing white crystalline granules. When accused-appellant placed the buy-bust money inside his right front pocket, PO3 Marcial immediately placed his white handkerchief above his shoulder, which was the pre- arranged signal. Thereafter, PO3 Marcial introduced himself as a police officer, arrested accused-appellant, and took the buy-bust money from the latter's pocket. The members of the buy-bust team arrived and secured the area because the accused-appellant's neighbors came over and tried to stop the buy-bust team from arresting the accused-appellant. Immediately thereafter, the team brought accused-appellant to the WPD office.[7]

At the WPD office, the seized items were marked by PO3 Marcial with the accused-appellant's initials "JBC," and were turned over to PO2 Napoleon De Ramos, who in turn prepared the joint affidavit of arrest, booking sheet and arrest report, request for laboratory examination, and the police referral letter for inquest proceeding. Afterwards, the request for laboratory examination, together with the confiscated items, was brought to the crime laboratory by PO2 Geronimo for analysis.[8]

The Chemistry Report then revealed that the seized sachet containing 0.254 gram tested positive for methamphetamine hydrochloride or shabu.[9]

For his part, accused-appellant interposed the defense of denial. He narrated that, at around 1:00 p.m. of July 31, 2003, he was resting inside their house, together with his wife, when they heard a commotion outside. They got out of bed to find out

---

[7] *Id*. at 5.

[8] *Id*. at 6.

[9] *Id*. at 11.

what was going on. When he opened the door of his house, he was surprised to see six armed men who immediately entered his house without saying anything and searched the premises. Since the armed men found nothing inside his house, they forcibly brought him outside and handcuffed him. His neighbors were alarmed by the upheaval so one of the police officers said, "*Huwag kayong makikialam dito*." The police officers then boarded him into their vehicle and brought him to the police station. On their way to the police station, one of the police officers hit him while the others were forcing him to admit that he was selling shabu. At the police station, the police officers demanded the sum of ₱200,000.00 in exchange for his freedom.[10]

The accused-appellant's brother-in-law, Michael Domingo, corroborated his testimony.[11]

After trial, the RTC convicted the accused-appellant as charged and sentenced him to a penalty of life imprisonment and imposed a fine of ₱500,000.

On appeal, the CA affirmed the RTC decision in its entirety.[12] Accused-appellant then appealed his conviction to this Court.[13]

The Issue

Whether the CA erred in affirming the Decision of the RTC convicting accused-appellant of the crime of selling of *shabu*.

The Court's Ruling

The appeal lacks merit.

Accused-appellant's argument centers on the credibility of the prosecution witnesses as he maintains that the prosecution's allegation that he sold illegal drugs publicly is unbelievable and contrary to common experience considering the clandestine nature of illegal drug dealings. He also contested the non-

---

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

[11] *Id*. at 7.

[12] *Id* at 13.

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

compliance with the procedure set forth in Section 21[14] of RA 9165 regarding the proper custody of seized dangerous drugs.[15]

To secure a conviction for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment.[16] The prosecution must also prove the illegal sale of the dangerous drugs and present the *corpus delicti* in court as evidence.[17]

In this case, the prosecution duly established the following: (1) the identity of the buyer — PO3 Marcial, the seller — accused-appellant, the object of the sale one sachet of shabu which is an illegal drug, and the consideration — the two pieces of marked two hundred peso bills; and (2) PO3 Marcial positively identified accused-appellant as the one who transacted and sold the shabu to him in exchange for the marked money. He caught accused-appellant in *flagrante delicto* selling the shabu during a buy-bust operation. The seized item was sent to the crime laboratory and yielded positive results for presence of a dangerous drug. The seized sachet of shabu was likewise presented in court with the proper identification by PO3 Marcial. Evidently, what determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense.

Accused-appellant makes much of the fact that the buy-bust team did not follow the procedure set forth in Section 21 of RA 9165 regarding the proper custody of seized dangerous drugs,

---

[14] (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[15] *Rollo*, p. 8.

[16] *People of the Philippines v. Michael Ros y Ortega, Rodolfo Justo, Jr. y Califlores, and David Navarro y Minas*, G.R. No. 201146, April 15, 2015.

[17] *People of the Philippines v. Rolando Carrera y Imbat,* G.R. No. 215731, September 2, 2015.

and manifests that there were lapses in the handling and safekeeping of the seized *shabu* that might affect its admissibility, integrity and evidentiary value.

In a buy-bust operation, the following links are necessary in order to establish the chain of custody: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.[18]

Applying these parameters, the Court is convinced that the chain of custody was duly established. In his direct examination, PO3 Marcial positively identified the seized sachet sold to him through the markings "JBC" placed on the seized item. Since the buy-bust team struggled against the accused-appellant's neighbors who were trying to prevent his arrest, PO3 Marcial was forced to mark the confiscated item at the police station. Thereat, it was properly inventoried and documented. Thereafter, a request for examination of the seized sachet of shabu was prepared. The seized sachet of shabu was sent to the PNP Crime Laboratory to determine the presence of illegal drug. As per Chemistry Report made by the Forensic Chemist, the seized sachet of shabu tested positive for the presence of a dangerous drug. When the prosecution presented the seized sachet of shabu in court, PO3 Marcial positively identified it to be the same illegal drug seized from accused-appellant. Further, the prosecution was able to present and identify the marked money in court.

Evidently, the records of the case showed that the prosecution successfully established the links in the chain of custody over the seized sachet of shabu, from the time the poseur-buyer seized the drugs, to the time it was brought to the PDEA office, then to the crime laboratory for testing, until the time the same was offered in evidence before the court.

---

[18] *People of the Philippines v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016.

Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.[19]

Lastly, Cutara failed to present clear and convincing evidence to overturn the presumption that the buy-bust team regularly performed their duties. Except for his bare allegation of denial, he has not ascribed any improper motive on the part of the police officers as to why the latter would falsely accuse him of selling shabu that would cause him to be imprisoned for life. Hence, the testimonies of the prosecution witnesses as to the preservation of the integrity and the evidentiary value of the seized illegal drugs deserve full faith and credit.

In sum, the totality of the prosecution's evidence undeniably shows that the integrity of the seized items had been duly preserved and its chain of custody had been accounted for. Thus, the accused-appellant's guilt for illegal selling of *shabu* had been sufficiently proved beyond reasonable doubt.

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated April 28, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06568, which affirmed *in toto* the Decision dated April 25, 2012 of the Regional Trial Court of Manila, Branch 53, in Criminal Case No. 03-216994 finding the accused-appellant Jose Cutara y Brix **GUILTY** of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED**.

SO ORDERED.

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

---

[19] *People of the Philippines v. Juan Asislo y Matio*, G.R. No. 206224, January 18, 2016.

FIRST DIVISION

[G.R. No. 225623. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LORENZO RAYTOS *y* ESPINO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON IS ACCORDED GREAT WEIGHT AND RESPECT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.—** [T]he issue of whether the accused acted in self-defense is essentially a question of fact. The RTC's assessment of the credibility of witnesses is accorded great weight and respect, especially when affirmed by the CA. This is a rule borne out of necessity given the distinct vantage point of the trial court in observing and assessing the witnesses while undergoing the rigors of direct and cross-examination; it is only in the crucible of this exercise that the trial court is able to extract incommunicable evidence from the witnesses based on their demeanor on the stand. Hence, in the absence of a clear showing that the lower courts erred in their appreciation of the facts, or in their application of the pertinent laws and jurisprudence to such facts, their findings will no longer be disturbed on appeal.

2. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.—** A plea of self-defense admits the commission of the act charged as a crime; accordingly, the *onus probandi* falls on the accused to prove that such killing was justified — failure to discharge which renders the act punishable. Thus, to exonerate himself, the accused must establish: (i) that there was unlawful aggression by the victim; (ii) that the means employed to prevent or repel such aggression were reasonable; and (iii) that there was lack of sufficient provocation on his part. Of the three, unlawful aggression is the foremost requirement; absent such element, self-defense, whether complete or incomplete, cannot be appreciated.

3. **ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; THE ACT OF DRAWING A KNIFE FROM THE WAIST COULD NOT BE CATEGORIZED AS UNLAWFUL AGGRESSION, FOR THERE WAS YET NO ACTUAL RISK OR PERIL TO THE LIFE OR LIMB OF THE ACCUSED; CASE AT BAR.—** Unlawful aggression is predicated on an actual, sudden, unexpected, or imminent danger — not merely a threatening or intimidating action. x x x Araza's alleged act of simply drawing a knife from his waist fell short of the threshold required by law and prevailing jurisprudence. At that point, and as correctly observed by the courts below, there was yet no actual risk or peril to the life or limb of Raytos.

4. **ID.; ID.; ID.; ID.; ID.; AGGRESSION, IF NOT CONTINUOUS, DOES NOT CONSTITUTE AGGRESSION WARRANTING DEFENSE OF ONE'S SELF.—** Time and again, this Court has held that when an unlawful aggression that has begun has ceased to exist, the one who resorts to self-defense has no right to kill or even to wound the former aggressor. Aggression, if not continuous, does not constitute aggression warranting defense of one's self. Here, Raytos admitted that after obtaining possession of the weapon, he no longer had any reason to stab Araza as in fact, there was no showing that the latter persisted in his alleged purpose of wanting to hurt Raytos. Thus, based on his own statements, Raytos overstepped the acceptable boundaries of self-preservation when he deliberately inflicted fatal injuries on Araza, even when the purported aggression had already ceased. By killing Araza, Raytos was no longer acting in self-defense but in retaliation against the former.

5. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY OR *ALEVOSIA*; CHARACTERIZED BY A DELIBERATE AND UNEXPECTED ASSAULT FROM BEHIND, WITHOUT GIVING THE VICTIM A CHANCE TO DEFEND HIMSELF OR REPEL THE ASSAULT AND WITHOUT RISK TO THE ASSAILANT.—** Treachery or *alevosia*, is present when the offender adopts means, methods, or forms in the execution of the felony that ensure its commission without risk to himself arising from the defense which the offended party might make. *Alevosia* is characterized by a deliberate, sudden and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and without risk to the assailant.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated February 26, 2016 (questioned Decision) of the Court of Appeals, Nineteenth (19th) Division (CA) in CA--G.R. CR-HC. No. 01556. The questioned Decision affirmed the Decision[3] dated November 5, 2012 of the Regional Trial Court of Calbiga, Samar, Branch 33 (RTC), in Criminal Case No. C-2010-1748 (RTC Decision), finding herein accused-appellant Lorenzo E. Raytos (Raytos) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Information[4] charging Raytos with Murder states as follows:

That on or about the (sic) 12:00 midnight, more or less, of February 1, 2010 at Barangay Nagcaduha, Municipality of Villareal, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with deliberate intent to kill, with treachery and evident premeditation, which qualifies the offense to murder, did, then and there, willfully, unlawfully and feloniously, attack, assault and stab DAVID ARAZA with the use of a short bladed weapon, which accused had provided himself for the purpose, thereby inflicting and hitting the victim fatal stab wounds on the different parts of his body, which wounds caused his death.

---

[1] *Rollo*, pp. 17-19.

[2] *Id*. at 5-16. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig concurring.

[3] CA *rollo*, pp. 46-61. Penned by Judge Janet M. Cabalona.

[4] Records, pp. 1-2.

CONTRARY TO LAW.[5]

Upon his arraignment, Raytos entered a plea of "not guilty,"[6] and during the pre-trial conference, Raytos invoked self-defense.[7] Trial ensued with the defense presenting its evidence first.

The Facts

The factual narrations, for both defense and prosecution, were summarized by the CA, as follows:

Version of the Defense

Raytos testified that he knew the victim, David Araza, since birth, who was residing in Brgy. Igot, Villareal, Samar, which is 300 meters away from his residence in Brgy. Nagcaduha, Villareal, Samar. On February 1, 2010, at around 8:00 in the evening, he was in Purok 1, Brgy. Nagcaduha Villareal, Samar, coming from his cousin's place, when he was invited by Indo Sabio to partake on some leftovers from the fiesta and to join them as a dance session was being held. He joined the table where Indo Sabio, Anita Sabio, Kanor Sabio, Domingo Sabio, Romeo Nacase and Edgar Papiona were seated. Seated on the other table beside them were Indo Sabio's wife, a certain Tina, Elsa Sabio, Rudy Araza and Rudy's wife. At around 11:30 in the evening, David Araza (victim), coming from Purok 2, passed by Purok 1 and was approached by Edgar Papiona, and the two danced. After they danced, the victim approached the table where Anita Sabio was seated and invited her to dance, but the latter refused. Thereafter, the victim and Edgar Papiona danced again. After dancing, the victim approached again Raytos' table and asked who was brave enough while drawing a knife tucked in the waistband of his pants. Raytos tried to escape by moving backwards and, while doing so, he got hold of the victim's right hand. Raytos twisted the victim's arm, got hold of the knife and then stabbed the victim several times on the chest. He delivered three (3) successive stabbing blows in a quick and swift manner because he panicked. He ran away immediately and surrendered himself to the barangay officials and they proceeded to the police station.

---

[5] *Id.* at 1.

[6] *Rollo*, p. 6.

[7] *Id.*

Dionisio Mado y Bardaje (hereafter Mado) testified that he knew Raytos because the latter often comes to Brgy. Guintarcan, where Mado resides. He also knew the victim personally. On February 1, 2010, at around 10:00 in the evening, he was at Brgy. Nagcaduha, Villareal, Samar, watching the dance session being held, and he saw the victim enter the dance area and challenge the people seated on one table to a fight. When the victim saw Raytos, he pointed at Raytos and said "You are the one I want" and Raytos answered saying "I [h]ave no fault against you." Then, the victim drew a knife from his waist and stabbed Raytos but the latter was able to parry the stabbing blow and wrested possession of the knife from the victim. Mado recalled that Raytos used both his hands in parrying the stabbing blow delivered by the victim and when Raytos got hold of the knife, he stabbed the front portion of the victim's body. Mado did not see anything more because Raytos ran away after the incident, and a commotion then ensued.[8]

Version of the Prosecution

The prosecution presented three witnesses, Edgardo Papiona, Romeo Nacase and Francisca Araza, whose testimonies constitute the following version:

Edgardo Papiona y Hermo (hereafter Papiona), a resident of Brgy. Nagcaduha, Villareal, Samar, testified that he knew both the victim and Raytos. On February 1, 2010, at around 12:00 a.m., he was in front of his house with Raytos and ten (10) others occupying three (3) tables and having a dance session as it was just the day after their barangay fiesta. While he was dancing with the victim, Raytos approached them and said that he wanted to dance with the victim. Papiona acceded and went to the side of the road just an arm's length away from the dance area. From his position at the side of the road, he saw Raytos stab the victim when the latter turned his back from Raytos while dancing. Papiona recalled that he saw Raytos hold the right back shoulder of the victim and stab the latter's back several times with the use of a knife measuring 8 inches in length. Raytos then went to a hilly portion of their barangay while Papiona helped in loading the victim on a truck and in bringing the latter to the hospital. He did not hear any argument from both the victim and Raytos prior to the Incident. Three days later, the victim died.

---

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

Romeo Nacase y Tarayo (hereafter Nacase), testified that he is a resident of Brgy. Nagcaduha, Villareal, Samar, and knew both the victim and Raytos. On February 1, 2010, at around 9:00 in the evening, he was having a drinking spree with the victim and a certain Dado Nacase. Soon thereafter, he saw the victim and Edgar dancing and while the two danced, he saw Raytos pull a knife from his pocket and approach the victim from the back. When the victim was about to turn around, Raytos took hold of the victim's shirt and stabbed the victim in the back. He was about 4 1/2 meters away when the incident happened. He did not hear the victim and Raytos argue or talk before the stabbing incident.

Francisca Araza y Macasalabang (hereafter Francisca), wife of the victim, is left with eleven (11) children. She presented and identified official receipts as proof of the expenses incurred for the hospitalization and other medical expenses of her husband amounting to ₱4,986.00 and a certification from Rendeza Funeral Parlor for embalming services amounting to ₱8,000.00. With the death of her husband, she felt sadness, the heavy weight of present and future difficulties, and longing for him that even the amount of ₱1,000,000.00 will be an insufficient compensation. Her deceased husband used to earn an average monthly income of ₱2,000.00.[9]

Ruling of the RTC

After trial on the merits, the RTC found Raytos guilty of the crime of Murder qualified by treachery:

> **WHEREFORE**, premises considered, the court finds accused **LORENZO RAYTOS Y ESPINO GUILTY** beyond reasonable doubt of the crime of **Murder** qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of ***reclusion perpetua***.
>
> He is likewise ordered to pay the heirs of the victim David Araza the following amounts:
>
> 1. ₱50,000.00 as civil indemnity;
> 2. ₱50,000.00 as moral damages; and
> 3. ₱12,896.00 as actual damages.
>
> No pronouncement as to costs.

[9] *Id*. at 7-8.

SO ORDERED.[10]

Raytos appealed to the CA via Notice of Appeal dated December 10, 2012.[11] Raytos then filed his Brief dated March 16, 2015,[12] while the plaintiff-appellee, through the Office of the Solicitor General, filed its Brief dated October 14, 2015.[13] In a Manifestation dated November 9, 2015, Raytos waived his right to file a Reply Brief.[14]

Ruling of the CA

In the questioned Decision, the CA affirmed Raytos' conviction while modifying the award of damages. The dispositive portion reads:

WHEREFORE, the appeal is hereby DENIED. The Decision of the RTC, Branch 33, Calbiga, Samar, in Criminal Case No. C-2010-1748 is hereby AFFIRMED with MODIFICATIONS. Lorenzo Raytos y Espino is GUILTY beyond reasonable doubt of Murder and is sentenced to suffer the penalty of *reclusion perpetua*. Raytos is further ordered to pay the heirs of the victim the following: civil indemnity of ₱50,000.00, moral damages of P50,000.00, exemplary damages of ₱30,000.00 and temperate damages of ₱25,000.00. The amounts of damages awarded are subject further to interest of 6% per annum from the date of finality of this judgment until they are fully paid.

SO ORDERED.[15]

On March 14, 2016, Raytos brought the instant case before this Court via Notice of Appeal[16] of even date.

In lieu of supplemental briefs, Raytos and plaintiff-appellee filed separate manifestations respectively dated February 9,

---

[10] CA *rollo*, pp. 60-61.

[11] Records, p. 225.

[12] CA *rollo*, pp. 29-45.

[13] *Id*. at 101-118.

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

[15] *Rollo*, p.15.

[16] *Supra* note 1.

2017[17] and January 30, 2017,[18] foregoing their right to file the same.

Issue

In the instant appeal, Raytos seeks to reverse the questioned Decision based on the following assignment of errors:

[WHETHER OR NOT THE CA] ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER AND NOT APPRECIATING THE SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

[WHETHER OR NOT THE CA] ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER AS THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT ESTABLISHED.[19]

Simply put, the basic issue for the Court's resolution is whether Raytos' guilt for the crime of Murder was sufficiently proven beyond reasonable doubt.

The Court's Ruling

The Court finds the appeal lacking in merit.

In this case, the opposing sides are incessant on the truthfulness of their version of the story, which differ in material points of fact; the State, on one hand, has successfully presented strong evidence of guilt for Murder, while Raytos, on the other hand, maintains his innocence based on his plea of self-defense.

At this point, it bears noting that the issue of whether the accused acted in self-defense is essentially a question of fact.[20] The RTC's assessment of the credibility of witnesses is accorded great weight and respect, especially when affirmed by the CA.[21]

---

[17] *Id*. at 28-31.

[18] *Id*. at 33-35.

[19] CA *rollo*, p. 31.

[20] *Martinez v. Court of Appeals,* 549 Phil. 683, 705 (2007).

[21] *People v. Sanico*, 741 Phil. 356, 374 (2014).

This is a rule borne out of necessity given the distinct vantage point of the trial court in observing and assessing the witnesses while undergoing the rigors of direct and cross-examination; it is only in the crucible of this exercise that the trial court is able to extract incommunicable evidence from the witnesses based on their demeanor on the stand.[22] Hence, in the absence of a clear showing that the lower courts erred in their appreciation of the facts, or in their application of the pertinent laws and jurisprudence to such facts, their findings will no longer be disturbed on appeal.

In fine, given the concurrent findings of guilt made by both the RTC and CA, the Court finds that no cogent reason exists to reverse Raytos' conviction.

Raytos Failed To Establish The Elements Of Self-Defense

A plea of self-defense admits the commission of the act charged as a crime; accordingly, the *onus probandi* falls on the accused to prove that such killing was justified — failure to discharge which renders the act punishable.[23]

Thus, to exonerate himself, the accused must establish: (i) that there was unlawful aggression by the victim; (ii) that the means employed to prevent or repel such aggression were reasonable; and (iii) that there was lack of sufficient provocation on his part.[24] Of the three, unlawful aggression is the foremost requirement; absent such element, self-defense, whether complete or incomplete, cannot be appreciated.[25]

After poring over the records of this case, the Court is convinced that Raytos failed to establish unlawful aggression on the part of the victim, David Araza (Araza). Necessarily, Raytos' claim of self-defense has no more leg to stand on.

---

[22] See *People v. Sanico*, *id*.

[23] See *People v. Escarlos*, 457 Phil. 580, 594-595 (2003).

[24] *Id*. at 732.

[25] *People v. Dulin*, G.R. No. 171284, June 29, 2015, 760 SCRA 413, 425.

In his version of the incident, Raytos claimed that Araza drew a knife from his left waist following a brief exchange of words between them.[26] Raytos then moved back, allegedly intending to escape, but instead ended up wresting possession of the knife from Araza.[27] After doing so, Raytos stabbed Araza numerous times, leading to the latter's demise.[28]

The Court finds this narration of events to be incredible. Self-defense, like alibi, is a defense easy to concoct.[29] Testimonial evidence, to be believable, must not only proceed from the mouth of a credible witness but must also be credible following common experience and leading to the inference of its probability under the circumstances.[30] Here, it is difficult to imagine how Raytos, while attempting to escape, was suddenly able to grab hold of Araza's hand and after relieving the latter of the knife, proceeded to stab him multiple times in quick succession:

Q - So, Mr. Witness, when you saw this David Araza drew a knife from the left side tucked in his belly, what did you do?

A - At the time when he drew his knife tucked on his left waist, and at the same time said "who was braver", **I moved backward and even the chair almost fall (sic), I decided to escape by moving my body backward and I even got hold of his right hand.**

Q - So, upon holding the right hand of David Araza, what happened next, Mr. Witness?

A - After I got hold of his hand, I twisted his hand, that's why I was able to got (sic) hold the possession of the knife.

x x x x x x x x x

[26] See CA *rollo*, p. 49.

[27] *Id*.

[28] *Id*. at 49, 51.

[29] *Arcana v. Court of Appeals*, 442 Phil. 7, 13 (2002).

[30] *People v. Domingcil,* 464 Phil. 342, 357 (2004).

Q - Do you remember, Mr. Witness, in what particular part of the body did you stab David Araza?

A - I think, he was hit on the chest, at this area.

(Witness touching his chest with his right arm and said)

Somebody even told me that David Araza sustained six (6) wounds.

Q - Mr. Witness, setting aside what this person had told you, from your own recollection, how many stab thursts (sic) did you in-fact inclict (sic) on the victim?

A - **What I could remember, I stabbed him several times.**[31] (Emphasis supplied)

But even if the Court were to believe this version of the events, it is evident that no unlawful aggression can be deduced. Stated differently, there was clearly no imminent danger on the person of Raytos as would justify his killing Araza.

Unlawful aggression is predicated on an actual, sudden, unexpected, or imminent danger — not merely a threatening or intimidating action.[32] In *People v. Dulin*,[33] the Court had the occasion to elaborate on the kinds and nature of unlawful aggression, *viz.*:

> Unlawful aggression is of two kinds: (*a*) actual or material unlawful aggression; and (*b*) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere

---

[31] TSN, August 19, 2010, pp. 10-11; records, pp. 47-48.

[32] *People v. Escarlos*, *supra* note 23, at 596.

[33] *Supra* note 25.

threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.[34]

In *People v. Escarlos*,[35] the Court ruled that the mere drawing of a knife by the victim does not constitute unlawful aggression, whether actual or imminent, as the peril sought to be avoided by the accused was both premature and speculative:

> In the present case, appellant claims that there was unlawful aggression on the part of the victim when the latter unceremoniously boxed him on the forehead in the heat of their argument. Appellant adds that he had initially thought of hitting back when he noticed that the victim was pulling out a kitchen knife. Hence, to save his life, the former grabbed the weapon and used it to stab the latter. Appellant insists that under the circumstances, he was legally justified in using the knife to ward off the unlawful aggression. For him to wait for the knife to be raised and to fall on him before acting to defend himself would be asking too much, he argues.
>
> The contentions of appellant are untenable. **While the victim may be said to have initiated the confrontation, we do not subscribe to the view that the former was subjected to an unlawful aggression within the legal meaning of the phrase.**
>
> The alleged assault did not come as a surprise, as it was preceded by a heated exchange of words between the two parties who had a history of animosity. Moreover, **the alleged drawing of a knife by the victim could not have placed the life of appellant in imminent danger. The former might have done it only to threaten or intimidate the latter.**
>
> Unlawful aggression presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action. **Uncertain, premature and speculative was the assertion of appellant that the victim was about to stab him, when the latter had merely drawn out his knife. There is aggression, only when the one attacked faces real and immediate threat to one's life.**

---

[34] *Id*. at 426.

[35] *Supra* note 23.

The peril sought to be avoided must be imminent and actual, not just speculative.[36] (Italics omitted; emphasis supplied)

Following a similar *ratio*, in *People v. Borreros*,[37] the Court likewise held that the act of drawing a gun from the waist could not yet be categorized as unlawful aggression.

Applying the foregoing to this case, Araza's alleged act of simply drawing a knife from his waist fell short of the threshold required by law and prevailing jurisprudence.[38] At that point, and as correctly observed by the courts below, there was yet no actual risk or peril to the life or limb of Raytos.[39]

Parenthetically, the Court notes the testimony of Dionisio B. Mado (Mado), the other witness for the defense, who supplied additional details on the incident. In his narration of events, Mado was purporting to show unlawful aggression on the part of Araza, claiming that the latter *actually* delivered stabbing blows to Raytos:

Q - Mr. Witness, when the victim challenged Lorenzo Raytos for a fight, what was the distance of David Araza with respect to Lorenzo Raytos?

A - At this distance.

(Witness stood up from where he is seated and pointed to the distance where the defense counsel is standing which measures four (4) feet in distance.[)]

Q - After David Araza challenged Lorenzo Raytos for a fight, what did Lorenzo Raytos do after that?

A - Lorenzo Raytos answered: "I have no fault against you."

Q - After that answer from Mr. Lorenzo Raytos, what did David Arazado?

---

[36] *Id*. at 596.

[37] 366 Phil. 360, 370 (1999).

[38] See CA *rollo,* p. 55.

[39] *Rollo*, p. 12.

(The witness demonstrated while he was standing and getting something from his waist and as if holding something moving his right hand forward in the level of his waist doing a stabbing blow forward)

A - **David Araza drew his fan knife from his waist and stabbed Lorenzo Raytos, ma'am.**

x x x x x x x x x

Q - In what particular body (sic) was the victim, David Araza was (sic) stabbed by Lorenzo Raytos?

A - What I saw only was the front portion of his body, ma'am.

(Witness demonstrated by holding his chest and rolling his palm around his chest).[40] (Emphasis supplied)

Despite such positive testimony, however, this was not given any weight by the RTC in arriving at a judgment of conviction,[41] even noting certain inconsistencies in the testimonies of the defense witnesses.[42] The following material portions in Mado's cross-examination sheds light on his credibility as a witness for the defense:

Q - Do you have an acquaintance by the name of Juanito Rado, Mr. Mado?

A - Yes. [H]e is my friend and compadre.

Q - And this Juanito Rado is related to Elisa Rado, the wife of Lorenzo Raytos?

A - I am not aware if they were related?

Q - But they have the same surname?

A - I am not certain; maybe they have the same surname.

Q - Is it not a fact that it was Juanito Rado who requested you to testify before this Honourable Court to help Lorenzo Raytos in his case?

---

[40] TSN, November 11, 2010, pp. 5-7; records, pp. 82-84.

[41] See CA *rollo*, p. 56.

[42] *Id.* at 55.

A - He did not ask me for such.

Q - Who then, contacted you to testify before this Honourable Court, since Lorenzo Raytos is already detained at Samar Provincial Jail?

A - Nobody, ma'am.

Q - Meaning, you come (sic) here on your own to testify?

A - I just came here alone to testify in favour of Lorenzo.

COURT:

Q - How did you come to know that this case will be heard on November 11, 2010, for you to testify?

A - I was informed by a friend in Guintarcan that this case will betried on that day, your Honor.

PROS. NAVAL:

Q - So, that friend was Juanito Rado?

A - No, ma'am.

Q - Who would that be?

A - Someone from Guintarcan.

Q - Can you name that person?

A - Jesus Bardaje.

Q - **This is not the first time that you testified before this Honourable Court, [a]m I right, Mr. Mado?**

A - **It's my first time.**

Q - **Are you sure of that, Mr. Mado?**

A - **Yes, ma'am.**

Q - **Is it not a fact Mr. Mado that you were here before this Honourable Court years ago to testify in favour of one accused in the name of Pablo Hilvano?**

A - **Yes, ma'am. It was long (sic) time ago.**

Q - **And that Pablo Hilvano was even acquitted on that case because of your corroborative testimony?**

A - **Yes, ma'am.**

Q - **So, it is now clear and you are changing your answer that it is not the first time you testified before this Honourable Court.**

A - **Yes, ma'am.**

Q - **So, your previous answer was a lie?**

A - **Yes, ma'am.**

Q - You likewise claim Mr. Mado that during the incident on February 1, 2010, you saw the accused Lorenzo delivered stab blows on the **front portion of the body of the victim David**. Did I get it right?

A - Yes ma'am, because they were into wrestling and grappling over the weapon and it was David that was wounded.

Q - **Here at the front?**
(Prosecutor is pointing on the front of her body upon asking question)

A - **Yes, ma'am.**

Q - Are you sure of that? You will not change your answer?

A - I will not change my answer.

Q - Is it not because you said that David was hit at the front portion of the body because it was what Lorenzo Raytos told you that David was hit at the front portion?

A - No, I actually saw that?

Q - **You will not change your answer Mr. Mado, even if I will tell you before this Honourable Court that the victim did not sustain any single injury on the chest?**

A - **I will not.**[43] (Emphasis supplied)

Notably, nowhere in his testimony did Raytos make mention of any threatening behavior from Araza, aside from the drawing of the knife, which would have necessitated immediate retaliation on his part. Worse, Mado's testimony was unsupported by the Medico Legal Report[44] dated February 4, 2010. Were the

---

[43] TSN, December 2, 2010, pp. 4-7; records, pp. 96-99.

[44] Records, p. 34.

testimony of Mado true, *i.e.,* that Araza actually delivered stabbing blows to Raytos, such material detail would certainly have been mentioned by the latter during his testimony, especially considering that his freedom was hanging in the balance. Unfortunately, notwithstanding numerous opportunities to supply details on the incident, Raytos' testimony was utterly silent on such matter. Accordingly, the Court affirms the uniform findings of the RTC and CA and adopts the latter's appreciation of the evidence on record.

Further on this point, even assuming *arguendo* that unlawful aggression was present on the part of Araza, there was no longer any danger on Raytos' person from the moment he disarmed the former by wresting possession of the knife. Raytos' admission during his cross-examination dispels all doubt:

COURT:

Q - Now, you said you were able to wrestle the knife from the victim when he first delivered the stab blow at your direction, is that correct?

A - Yes, your Honor.

Q - **In other words, when you wrestled the knife from the possession of the victim, you were no longer in any danger?**

A - **Yes, your Honor, but I do not know what I have done.**

Q - **In other words, because the victim was no longer in possession of any weapon, there was no more reason for you to stab him?**

A - **Your Honor, it was so sudden and that's all I remember.**

Q - And despite the fact that the victim was no longer in possession of the weapon, you continued stabbing him for three (3) times in succession?

A - When I got hold and wrestled the knife from him, he did not move apart, he was just very close and I immediately stab (sic) him successively. That's all I remember.[45] (Emphasis supplied)

---

[45] TSN, September 23, 2010, pp. 9-10; records, pp. 69-70.

Time and again, this Court has held that when an unlawful aggression that has begun has ceased to exist, the one who resorts to self-defense has no right to kill or even to wound the former aggressor.[46] Aggression, if not continuous, does not constitute aggression warranting defense of one's self.[47]

Here, Raytos admitted that after obtaining possession of the weapon, he no longer had any reason to stab Araza as in fact, there was no showing that the latter persisted in his alleged purpose of wanting to hurt Raytos. Thus, based on his own statements, Raytos overstepped the acceptable boundaries of self-preservation when he deliberately inflicted fatal injuries on Araza, even when the purported aggression had already ceased.[48] By killing Araza, Raytos was no longer acting in self-defense but in retaliation against the former.[49]

All told, the Court finds the evidence sorely lacking in establishing self-defense on the part of Raytos.

The Qualifying Circumstance Of Treachery Was Sufficiently Established By The Evidence

To alleviate his conviction, Raytos contends that there was a dearth of evidence to show that the killing was attended by the qualifying circumstance of treachery.[50] Raytos specifically avers that had he wanted to ensure that no risk would come to him, he would have chosen another time and place to stab Araza instead of inside the dancing area, where many people were around.[51]

---

[46] *People v. Escarlos*, *supra* note 23, at 597.

[47] *Martinez v. Court of Appeals*, *supra* note 20, at 707.

[48] See *People v. Escarlos*, *supra* note 23, at 597.

[49] See *Martinez v. Court of Appeals*, *supra* note 20, at 707.

[50] CA *rollo*, p. 40.

[51] *Id*. at 43.

The Court disagrees.

Treachery or *alevosia*, is present when the offender adopts means, methods, or forms in the execution of the felony that ensure its commission without risk to himself arising from the defense which the offended party might make.[52] *Alevosia* is characterized by a deliberate, sudden and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and without risk to the assailant.[53]

In appreciating such circumstance, the RTC disposed as follows:

> The victim was dancing when he was attacked. There was no confrontation. No forewarning. His dancing partner was even misled into believing that accused only wanted to dance with the victim. But of course, it was just an excuse, so that it would be easier for the accused to attain his purpose. It was so sudden that even the others were unprepared to do anything to prevent the attack or at least minimize the injuries. It was an unexpected occurrence right in the middle of a celebration which was intended to be a joyous one.
>
> The medico legal report shows the following wounds:
>
> (+) stab wound, scapular area, (R) 2 cm.
> (+) stab wound, posterior axillary line (R), 3 cm.
> (+) stab wound, (R) flank area, 3.5 cm.
> (+) stab wound, infrascapular area, (L)
>
> These wounds clearly disprove the claim of accused that he was suddenly able to stab the victim because he wrestled with him, because actually, there was no fight that preceded the attack. There was plainly, murder.[54]

To stress, the testimonies of the witnesses for the prosecution were unwavering as to the manner of killing—that Raytos suddenly stabbed Araza from the back while holding the latter's

---

[52] *People v. Arguelles*, 294 Phil. 188, 194 (1993).

[53] *People v. Villanueva,* 215 Phil. 58, 60 (1984).

[54] CA *rollo*, pp. 58-59.

shoulder. Further, that there were other people around that could have lent their help to Araza is inconsequential as treachery considers only the victim's means of defense at the time of the attack. Thus, so long as the accused deliberately employed means to ensure the commission of the crime without risk to himself from retaliation by the victim, treachery can be properly appreciated.

On this point, the Court's ruling in *People v. Rellon*[55] finds relevance. In that case, the victim was stabbed from behind while he was watching the singing and dancing during the *Sinulog* festival. Interestingly, the accused therein, as in this case, claimed self-defense in stabbing the victim. Said the Court:

> The accused Eugenio Rellon took the witness stand claiming self-defense. He narrated that on January 16, 1983 at around 5:30 in the afternoon, while walking towards his house at Tres de Abril, accused saw Arsenio Ram sitting at the roadside when the latter suddenly stood up, took his knife and thrust it towards Rellon. Accused was able to ward off the thrust by holding the deceased's arm and grappled for the possession of the knife. Having succeeded in getting the knife, accused accidentally stabbed the deceased in the right chest. After the stabbing incident, the accused left the scene.
>
> The principal question, as in most criminal cases, is the credibility of witness. A review of the records of the case, however, shows that the evidence undoubtedly supports the findings and conclusions of the trial court in its judgment and conviction.
>
> **Through the testimony of Virginia Lusareto, the lone eyewitness to the crime, it has been established beyond reasonable doubt that appellant stabbed Arsenio Ram at the back with a butcher's knife.**
>
> **The trial court held that the crime committed was murder. It appreciated treachery when it took note of the fact that the victim was suddenly stabbed from behind while he was watching the Sinulog dance.** The trial court stated:
>
> x x x x x x x x x
>
> Treachery was appreciated in cases where the victim while sitting on the ground unarmed and absolutely unprepared, and

---

[55] 249 Phil. 73 (1988).

> without the least suspicion of the danger he was incurring was suddenly and abruptly assaulted by the 2 accused, without a word being uttered, and the first blow hit him on the nape of the back, knocking him backwards to the ground, and as he tried to get up he was stabbed in the abdomen x x x. The same thing happened in the case at bar. The characteristic and unmistakable manifestation of alevosia is the deliberate, sudden and unexpected attack of the victim from behind, without any warning and without giving him an opportunity to defend himself or repel the initial assault x x x.

When appellant stabbed the victim, the latter was sitting on a bench watching the singing and dancing during the Sinulog festival. The victim was engrossed in the merrymaking when suddenly appellant stealthily stabbed him from behind. An attack from behind is treachery x x x.[56] (Citations omitted; emphasis supplied)

Proceeding from the foregoing, the Court finds no reason to overturn the concurring findings of the RTC and the CA with respect to the qualifying circumstance of treachery.

Finally, in view of the Court's ruling in *People v. Jugueta*,[57] the damages awarded in the questioned Decision are hereby modified, increasing the civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each. The temperate damages are likewise increased to ₱50,000.00.

WHEREFORE, in view of the foregoing, the appeal is **DISMISSED** for lack of merit. The Decision dated February 26, 2016 of the Court of Appeals in CA-G.R. CR-HC. No. 01556, finding accused-appellant Lorenzo E. Raytos **GUILTY** beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the heirs of David Araza the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos

[56] *Id*. at 75-76.

[57] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

(₱75,000.00) as moral damages, Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 225634. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN JAO *y* CALONIA and ROGELIO CATIGTIG *y* COBIO,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL DELIVERY AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.—** For a successful prosecution of the crime of Illegal Delivery of Dangerous Drugs, it must be proven that the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; that such delivery is not authorized by law; and that the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration. On the other hand, in the crime of Illegal Possession of Dangerous Drugs, the prosecution must prove that the accused is in possession of an item or object, which is identified as a prohibited drug; that

such possession is not authorized by law; and that the accused freely and consciously possessed the drug. In the instant case, both the RTC and the CA correctly found that the prosecution had established Jao's criminal liability for the aforesaid crimes.

2. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND RESPECT BY THE COURT AND ARE DEEMED FINAL AND CONCLUSIVE WHEN SUPPORTED BY THE EVIDENCE ON RECORD.—** It is settled that "[f]actual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record." Absent any showing that the trial and the appellate courts overlooked certain facts and circumstances that could substantially affect the outcome, their rulings must be upheld, as in this case.

3. **CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; THE DEATH OF THE ACCUSED PENDING APPEAL OF HIS CONVICTION EXTINGUISHES HIS CRIMINAL LIABILITY; AS SUCH, THE CRIMINAL CASES AGAINST HIM SHOULD BE DISMISSED AND DECLARED CLOSED AND TERMINATED.—** While Jao's criminal liability remains, the same conclusion cannot be made with respect to Catigtig in view of his supervening death pending appeal. As already adverted to, in a letter dated February 9, 2016, the Bureau of Corrections informed the CA that Catigtig had already died on August 7, 2015, attaching thereto a duplicate copy of Catigtig's Certificate of Death issued by the Office of the Civil Registrar General. x x x . In *People v. Egagamao*, 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*." Thus,

upon Catigtig's death pending appeal of his conviction, his criminal liability is extinguished inasmuch as there is no longer a defendant to stand as the accused. As such, the criminal cases against him should be dismissed and declared closed and terminated.

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-appellants Allan Jao *y* Calonia (Jao) and Rogelio Catigtig *y* Cobio (Catigtig; collectively, accused-appellants) assailing the Decision[2] dated October 28, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01393, which affirmed *in toto* the Joint Judgment[3] dated August 25, 2011 of the Regional Trial Court of Dumaguete City, Branch 30 (RTC), convicting accused-appellants of the crimes of Illegal Delivery and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5[4]

---

[1] See Notice of Appeal dated December 2, 2015; *rollo*, pp. 32-34.

[2] *Id*. at 5-31. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Renato C. Francisco and Marie Christine Azcarraga-Jacob concurring.

[3] CA *rollo*, pp. 14-35. Penned by Judge Rafael Crescencio C. Tan, Jr.

[4] Pertinent parts of Section 5 of RA 9165 read:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

and 11,[5] Article II of Republic Act No. (RA) 9165,[6]otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from four (4) separate Amended Informations all dated September 23, 2008 charging accused-appellants of violations of Sections 5 and 11, Article II of RA 9165, to wit:

CRIMINAL CASE NO. 19189

That at about 6:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [Jao], did, then and there, willfully, unlawfully and feloniously, DELIVER AND GIVE AWAY to an informant of law enforcers, without authority by law, one (1) plastic sachet containing methamphetamine hydrochloride, locally known as "*shabu,*" weighing 0.01 gram, of which he was caught "in flagrante delicto."[7]

CRIMINAL CASE NO. 19190

That at about 6:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines and within the

---

[5] Pertinent portions of Section 11 of RA 9165 read:

SEC. 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "*shabu*" x x x.

[6] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[7] *Rollo*, p. 8.

jurisdiction of this Honorable Court, the above-named accused [Jao], did then and there willfully, unlawfully and feloniously HAVE in his possession, custody and control, without authority by law, six (6) plastic sachets containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.06 gram which were confiscated as a result of a search incidental to an arrest.[8]

CRIMINAL CASE NO. 19187

That at about 8:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [Catigtig], did, then and there, willfully, unlawfully and feloniously, DELIVER AND GIVE AWAY to [a] law enforcer, without authority by law, ten (10) plastic sachets containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.10 gram, of which he was caught "in flagrante delicto."[9]

CRIMINAL CASE NO. 19188

That at about 8:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Catigtig], did, then and there willfully, unlawfully and feloniously HAVE in his possession, custody and control, without authority by law, ONE (1) plastic sachet containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.06 gram, three (3) hand-rolled tinfoil and two (2) empty transparent plastic sachets which were confiscated as a result of a search incidental to an arrest.[10]

On September 26, 2008, accused-appellants were arraigned but refused to enter a plea. Thus, a plea of "not guilty" was entered for all the charges against them.[11]

The prosecution alleged that on June 2, 2008, a police team planned a buy-bust operation at Four Queens Motel located at Barangay Maslog, Sibulan, Negros Oriental, after an informant

---

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

[9] *Id*. at 9.

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

[11] *Id*. at 10.

notified them that Jao was engaged in the sale of *shabu*. Pursuant to the plan, four police officers checked in at Room 6 of the motel at around 5:45 in the afternoon. Acting as poseur-buyer, the informant called Jao and ordered *shabu* worth ₱800.00 for delivery at Room 6 of the motel. He then waited outside the room for Jao to arrive. When the latter arrived, the informant asked for the *shabu* and Jao replied by taking a plastic sachet from his waistband and handing it over to the former. The informant then executed the pre-arranged signal, prompting the policemen to arrest Jao. Thereafter, the arresting policemen searched Jao and found six (6) more plastic sachets containing *shabu*. Special Investigator Marlon Manzanaris (SI Manzanaris) then marked the plastic sachets seized from Jao.[12] However, when SI Manzanaris was about to prepare the inventory of the seized items, Jao suddenly and voluntarily informed the policemen that Catigtig was his source of contraband and agreed to cooperate for the latter's arrest. Special Agent Michael Dungog then instructed Jao to call Catigtig to order ten (10) more sachets of *shabu*, to which the latter agreed to deliver at around 8 o'clock that evening. Due to this development, the conduct of the inventory was suspended, and consequently, the policemen checked out of the motel and returned to their headquarters. During this time, SI Manzanaris retained custody of the items seized from Jao.[13]

At around 7:30 in the evening, the policemen went back to the motel after Jao received a text message from Catigtig that he was already outside Room 6. Three (3) policemen then hid inside the bathroom, while Jao acted as an informant and Senior Police Officer 2 (SPO2) Allen Germodo (SPO2 Germodo) as the poseur-buyer. When Catigtig entered the room, Jao introduced

---

[12] *Id*. at 11-13.

[13] "All this time, SI Manzanaris had custody of the items seized from the accused Jao which he placed inside a black bag containing their necessary materials for the conduct of an inventory. Upon reaching the NBI Office, SI Manzanaris placed the black bag — which contained all the seized items — inside a steel cabinet of which only he has the sole key to it." (CA *rollo*, p. 18. See also *rollo*, p. 13.)

SPO2 Germodo as the buyer of *shabu*, thus, prompting Catigtig to hand over a Marlboro cigarette pack containing ten (10) plastic sachets of *shabu* to SPO2 Germodo, who in turn, said "*Okay na ni*," signifying that the transaction had already taken place. The other policemen then rushed into the scene, arrested Catigtig, and frisked him, resulting in the discovery of another sachet of *shabu*. SPO2 Germodo then marked the sachets seized from Catigtig, and thereafter, he and SI Manzanaris conducted a formal inventory of the items seized from both Jao and Catigtig in the presence of representatives from the media, the DOJ, and the barangay. While the inventory was on-going, Special Investigator Nicanor Tagle then took photographs of the seized items.[14]

The accused-appellants were then taken to the NBI office for booking, while SI Manzanaris and SPO2 Germodo personally delivered the seized items in their respective custody to the Crime Laboratory. The seized items were received by PO1 Rex Tan (PO1 Tan), who in turn, handed them over to the Forensic Chemist, Police Chief Inspector (PCI) Josephine Llena (PCI Llena), who conducted a qualitative examination on the same. The examination revealed that the contents of the seized sachets from accused-appellants are indeed methamphetamine hydrochloride, or *shabu*.[15]

In his defense, Jao denied the charges against him. He claimed that on the day of his arrest, he was working at his employer's house. At around 2 o'clock in the afternoon, he received a call asking him to go to the motel as there was a woman waiting for him there. When he arrived at the motel, men pointed their guns at him and mauled him inside the motel room. He also denied calling Catigtig, insisting that one of the police officers called the latter.[16]

For his part, Catigtig likewise denied the accusations against him. He asserted that at about past 3 o'clock in the afternoon

---

[14] *Id*. at 13-14.

[15] *Id*. at 14-15. See also CA *rollo*, pp. 19-20.

[16] *Id.* at 15-16.

of June 2, 2008, Jao called and invited him to go to the motel to meet a woman. He initially declined but later on agreed. When Catigtig arrived at the motel, someone pointed a gun at him and dragged him inside the room where he was mauled. Catigtig admitted that an inventory was conducted in his presence but denied knowledge as to the source of the drugs placed on the table after his arrest.[17]

The RTC Ruling

In a Joint Judgment[18] dated August 25, 2011, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced them as follows: (*a*) for violation of Section 5, Article II of RA 9165, each accused-appellant was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (*b*) for violation of Section 11, Article II of RA 9165, each accused-appellant was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum and to pay a fine in the amount of ₱400,000.00.[19]

The RTC found the prosecution to have established that accused-appellants were validly arrested in a legitimate buy-bust operation, and that the searches made on them were likewise valid as they were made incidental to such arrests. On the other hand, it did not give credence to accused-appellants' defense of denial in light of the positive testimonies and the credible evidence against them. Further, the RTC upheld the integrity and evidentiary value of the seized items as the policemen properly complied with the chain of custody rule.[20]

Aggrieved, accused-appellants appealed to the CA.

---

[17] *Id*. at 16-17.

[18] CA *rollo*, pp. 14-35.

[19] *Id*. at 33-34.

[20] *Id*. at 22-33.

The CA Proceedings

In a Decision[21] dated October 28, 2015, the CA affirmed accused-appellants' respective convictions *in toto*.[22] It held that: (*a*) the prosecution had sufficiently established all the elements of illegal delivery and illegal possession of *shabu* against accused-appellants; (*b*) accused-appellants' arrests were made after legitimate buy-bust operations and not by instigation; and (c) there was no break in the chain of custody that would have compromised the integrity and evidentiary value of the seized items.[23] Hence, the instant appeal.

Meanwhile and after accused-appellants filed their Notice of Appeal, the CA received a letter[24] dated February 9, 2016 from the Bureau of Corrections, stating that Catigtig had already died on August 7, 2015.[25] Thus, the CA issued a Resolution[26] dated June 8, 2016 which, *inter alia*, referred the said letter to the Court for its consideration.

The Issue Before the Court

The core issue for the Court's resolution is whether or not accused-appellants are guilty beyond reasonable doubt of violations of Sections 5 and 11 of RA 9165.

The Court's Ruling

Jao's appeal must be denied, while the cases against Catigtig should be dismissed and declared closed and terminated.

---

[21] *Rollo*, pp. 5-31.

[22] *Id*. at 30.

[23] *Id*. at 18-29.

[24] CA *rollo*, p. 188. Signed by New Bilibid Prison Superintendent P/Supt. II Richard W. Schwarzkopf, Jr.

[25] See Certificate of Death dated August 10, 2015 signed by Office of the Civil Registrar General Registration Officer IV Maria Edith B. Ador; *id*. at 190.

[26] *Id*. at 195-197. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Marilyn B. Lagura-Yap and Pablito A. Perez concurring.

I.

For a successful prosecution of the crime of Illegal Delivery of Dangerous Drugs, it must be proven that the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; that such delivery is not authorized by law; and that the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration.[27] On the other hand, in the crime of Illegal Possession of Dangerous Drugs, the prosecution must prove that the accused is in possession of an item or object, which is identified as a prohibited drug; that such possession is not authorized by law; and that the accused freely and consciously possessed the drug.[28]

In the instant case, both the RTC and the CA correctly found that the prosecution had established Jao's criminal liability for the aforesaid crimes, considering that: (*a*) Jao himself delivered a plastic sachet containing 0.01 gram of *shabu* to the informant during a legitimate buy-bust operation; and (*b*) upon his arrest, the arresting officers searched Jao and found six (6) more plastic sachets containing *shabu* with an aggregate weight of 0.06 gram. Similarly, both courts *a quo* found that there was no break in the chain of custody of the sachets seized from Jao as SI Manzanaris had sole possession of such sachets from the time of Jao's arrest until he turned them over to PO1 Tan, who in turn, handed it over to Forensic Chemist PCI Llena for qualitative examination. It is settled that "[f]actual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record."[29] Absent any showing that the trial and the appellate courts overlooked certain facts and

---

[27] *People v. Maongco*, 720 Phil. 488, 502 (2013).

[28] *People v. Montevirgen*, 723 Phil. 534, 542 (2013), citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

[29] *Guevarra v. People*, 726 Phil. 183, 193 (2014), citing *Maxwell Heavy Equipment Corporation v. Yu*, 653 Phil. 338, 343 (2010).

circumstances that could substantially affect the outcome, their rulings must be upheld,[30] as in this case.

II.

While Jao's criminal liability remains, the same conclusion cannot be made with respect to Catigtig in view of his supervening death pending appeal. As already adverted to, in a letter[31] dated February 9, 2016, the Bureau of Corrections informed the CA that Catigtig had already died on August 7, 2015, attaching thereto a duplicate copy of Catigtig's Certificate of Death[32] issued by the Office of the Civil Registrar General.

Paragraph 1, Article 89 of the Revised Penal Code, states:

> Art. 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

In *People v. Egagamao*,[33] 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*."[34]

---

[30] See *id*. at 193.

[31] CA *rollo,* p. 188.

[32] *Id.* at 190.

[33] G.R. No. 218809, August 3, 2016.

[34] See *id*., citing *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

Thus, upon Catigtig's death pending appeal of his conviction, his criminal liability is extinguished inasmuch as there is no longer a defendant to stand as the accused.[35] As such, the criminal cases against him should be dismissed and declared closed and terminated.

WHEREFORE, the appeal is **DENIED**. The Decision dated October 28, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01393 is hereby **AFFIRMED** with **MODIFICATIONS** as follows:

(a) In CRIMINAL CASE NO. 19189, accused-appellant Allan Jao *y* Calonia is found **GUILTY** beyond reasonable doubt of the crime of Illegal Delivery of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00;

(b) In CRIMINAL CASE NO. 19190, accused-appellant Allan Jao *y* Calonia is found **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs defined and penalized under Section 11, Article II of RA 9165, and accordingly, sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum and to pay a fine in the amount of ₱400,000.00; and

(c) CRIMINAL CASE NOS. 19187 and 19188 are hereby **DISMISSED** and **DECLARED CLOSED** and **TERMINATED** in view of the death of accused-appellant Rogelio Catigtig *y* Cobio.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.*, concur.

---

[35] See *id*.

THIRD DIVISION

[G.R. No. 225743. June 7, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SANDY DOMINGO *y* LABIS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** We remind the appellant 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, especially after the CA as the intermediate reviewing tribunals has affirmed the findings, unless there is a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case.
2. **ID.; ID.; ID.; NOT AFFECTED BY THE NON-PRESENTATION OF THE PHYSICIAN WHO EXAMINED THE VICTIM IN RAPE CASE.—** We do not find the non-presentation of the physician who had examined AAA to affect in any significant manner the credibility of the victim's testimony. After all, the medical findings have never been considered indispensable in supporting convictions for rape. In contrast, we reiterate that the rape victim's testimony, standing alone, can be made the basis of the successful prosecution of the culprit provided such testimony meets the test of credibility.
3. **ID.; ID.; SWEETHEART DEFENSE IN RAPE CASE DESERVED SCANT CONSIDERATION.—** Anent the sweetheart defense of the appellant, the CA and the trial court justly rejected it. Such defense, being uncorroborated and self-serving, deserved scant consideration. Nonetheless, that the appellant and the victim had been sweethearts was no excuse in the eyes of the law for him to employ force and intimidation in gratifying his carnal desires. Was the complex crime of forcible abduction with rape committed?

4. **CRIMINAL LAW; FORCIBLE ABDUCTION WITH RAPE; ELEMENTS; FORCIBLE ABDUCTION ABSORBED IN RAPE WHERE THE REAL OBJECTIVE IN ABDUCTING WAS TO COMMIT RAPE.—** Under Article 342 of the *Revised Penal Code,* the elements of forcible abduction are: (1) the taking of a woman against her will; and (2) with lewd designs. The crime of forcible abduction with rape is a complex crime that occurs when the abductor has carnal knowledge of the abducted woman under the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under 12 years of age or is demented. Although the elements of forcible abduction obtained, the appellant should be convicted only of rape. His forcible abduction of AAA was absorbed by the rape considering that his real objective in abducting her was to commit the rape. Where the main objective of the culprit for the abduction of the victim of rape was to have carnal knowledge of her, he could be convicted only of rape.

5. **ID.; RAPE; PENALTY AND DAMAGES.—** The penalty of *reclusion perpetua* was properly imposed pursuant to Article 266(B) of the *Revised Penal Code.* To accord with jurisprudence, the awards of damages are increased as follows: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; and (3) ₱75,000.00 as exemplary damages. Moreover, the CA correctly imposed interest of 6% *per annum* on all such items of civil liability reckoned from the finality of 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

BERSAMIN, *J.*:

There is no complex crime of forcible abduction with rape if the primary objective of the accused is to commit rape.

The Case

The accused appeals the affirmance by the Court of Appeals (CA) of his conviction for forcible abduction with rape under the decision promulgated on September 24, 2015,[1] *viz.*:

> **WHEREFORE,** in view of the foregoing, the Appeal is **DENIED**. Accordingly, the Decision dated 6 September 2013 of the Regional Trial Court, Fourth Judicial Region, Branch 17, Cavite City in Criminal Case No. 39-04 is hereby **AFFIRMED.** Appellant is hereby ordered to pay the private offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.
>
> **SO ORDERED**.[2]

Antecedents

The factual and procedural antecedents as summarized by the CA follow:

> On 26 January 2004, an Information was filed charging appellant with the crime of Forcible Abduction with Rape in this wise:
>
> > That on or about the period between January 24 and 25, 2004, in the Municipality of Rosario, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and with lewd designs, and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously, abduct and take away one AAA, against her will and consent, and thereafter, by means of force, violence and intimidation, with the use of [a] bladed weapon and actuated by lust and lewd designs, have carnal knowledge of said victim, against her will and consent, to the damage and prejudice of said AAA.
> >
> > CONTRARY TO LAW.
>
> Upon arraignment on 2 March 2004, appellant, assisted by counsel entered a plea of NOT GUILTY.

---

[1] CA *rollo*, pp. 120-127; penned by Associate Justice Francisco P. Acosta, with Associate Justice Florito S. Macalino and Associate Justice Eduardo B. Peralta, Jr. concurring.

[2] *Id*. at 126.

Thereafter, trial ensued. The Prosecution presented AAA, SPO3 Felipe Gomez, Jr., and Elmer Marquez. The defense on the other hand presented Sandy Domingo and Jocelyn Mariano as witnesses.

x x x x x x x x x

People's Version

AAA is a saleslady in a public market in Rosario, Cavite. On 24 January 2004, at around 8:00 in the evening, private complainant was waiting for her cousin to fetch her, when appellant, who worked in a fish stall in the market, approached her. Appellant asked if he could accompany private complainant to her aunt's home, where she resided. Since AAA's cousin was not around to fetch her, she agreed for appellant to accompany her home.

The two boarded a tricycle. As they were about to leave, appellant brought out a bladed weapon and poked the same on AAA's right waist. Struck with fear, AAA was unable to ask for help. Along the way, AAA realized that they were no longer proceeding to her aunt's house because the tricycle made a different turn. They stopped at a place that was not familiar to her. Thereafter, the two of them alighted after appellant paid the tricycle driver. The entire time, however, appellant was holding the knife and poking it against AAA's side.

With appellant still holding the knife and poking it against AAA's waist, the two walked toward a house, appellant knocked on the door, and a man came out. Appellant and AAA were allowed entry inside the house. The man did not say anything and immediately went inside a room.

Appellant ordered AAA to enter another room. Once inside, appellant who was still holding the knife, undressed himself. Appellant ordered AAA to undress next, but AAA did not obey. Appellant, still holding the knife, forcibly undressed AAA until the latter was completely naked.

Appellant ordered AAA to lie down on the wooden bed. While still holding the knife, appellant inserted his penis into private complainant's vagina. AAA felt pain in her private part. Appellant also kissed AAA's neck and lips. Appellant made a pumping motion while his penis was inserted in AAA's vagina. Afterwards, appellant pulled out his penis, kissed AAA, and played with the knife on the latter's face. They did not sleep. After a while, appellant again inserted his penis inside her vagina and kissed her. After removing his penis,

he inserted it again for the fourth time. Thereafter, appellant dressed up and ordered her to put on her clothes. While he was helping her put on her clothes, she told him that she wants to go home. He answered that he will let her go home if she will not tell anybody what happened. At around 3:00 in the morning, they went out of the house and headed towards the tricycle terminal. She went home and told her Aunt what happened. Thereafter, they went to the police station to report the incident.

Defense's Version:

AAA was appellant's girlfriend. On 24 January 2004 at around 10:00 o'clock in the evening, he and AAA eloped and went to the house of his brother-in-law in Sapa II, Cavite. They spent the night there and agreed that they will go to her Aunt's house and get her things and will proceed to Bicol. When they reached her aunt's house, AAA went inside while he waited. After a few minutes, a man came out and chased him with a bolo which prompted him to run. At around 7:00 o'clock in the morning, he was at his sister's house when the policemen arrived and informed him that there was a complaint filed against him. He went with them to the police station.[3]

On September 6, 2013, the RTC rendered judgment finding the accused-appellant guilty as charged, decreeing thusly:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Sandy Domingo y Labis @ Bitoy GUILTY beyond reasonable doubt of the crime of forcible abduction with rape, defined and penalized under Article 342, in relation to Article 266-A (as amended by R.A. 8353) and Article 48 of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua*. Further, accused Sandy Domingo is hereby ordered to pay AAA: (1) the amount of ₱50,000.00, as civil indemnity *ex delicto*, and (2) the amount of ₱50,000.00, as moral damages; and to pay the costs.

SO ORDERED.[4]

Judgment of the CA

On September 24, 2015, the CA affirmed the RTC, holding that AAA's testimony categorically describing how the appellant

---

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

[4] *Id*. at 16-23; penned by Judge Manolita Y. Gumarang.

had abducted and ravaged her was credible; that her failure to shout for help or to offer tenacious resistance did not make her submission to him voluntary; that his use of the knife was sufficient to compel her to submit to his demands; that the presentation of the examining physician as a witness was not indispensible in proving the rape; that his "sweetheart theory" could not be given weight as a defense because he did not thereby establish that such relationship had really existed.

Issue

In his appeal, the appellant submits that:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[5]

The appellant contends that AAA's testimony was incomplete and incredible, and as such did not substantiate the charges against him; that she had not thereby elaborated how she was forced, coerced or intimidated into submitting to him; that she had voluntarily gone with him, and had consented to the sexual congress;[6] that her conduct before, during and immediately following the crime belied her allegations against him; that her testimony was uncorroborated because the Prosecution did not present the examining physician; and that on the other hand his own witness, Jocelyn Mariano, corroborated his having a romantic relationship with AAA.[7]

In other words, the appellant submits that the CA committed serious reversible errors in finding him guilty of forcible abduction with rape despite (*a*) the incredible testimony of AAA; (*b*) the failure of the Prosecution to present the examining physician to explain the findings; and (*c*) the "sweetheart theory" advanced by him.

---

[5] *Id*. at 54.

[6] *Id*. at 57.

[7] *Id*. at 60-65.

Ruling of the Court

We affirm the CA's decision with modification of the characterization of the crime committed.

We note at the outset that the RTC and the CA both found AAA's testimony to be credible. Consequently, it became incumbent upon the appellant to present clear and persuasive reasons to persuade the Court to reverse their unanimous determination of her credibility as a witness in order to resolve the appeal his way. Alas, he did not discharge his burden, and, consequently, we declare that the CA aptly held that:

> Our review of the records reveals that AAA's testimony was candid and straightforward. During cross-examination, she remained steadfast, consistent and unwavering in her testimony. She categorically described how appellant took advantage of her. She narrated that appellant offered to accompany her home. However, when they boarded the tricycle, appellant poked a bladed weapon on her right waist. Paralyzed with fear, she was unable to shout or ask for help. x x x x [W]hile it appears that AAA initially agreed for appellant to accompany her home, her willingness ceased when appellant pointed a bladed weapon at her right waist. Overcome by fear, she was not able to react when the tricycle proceeded to an unfamiliar place. Considering the foregoing circumstances, AAA's failure to shout for help does not give less credit to her testimony. Time and again, it has been held that physical resistance is not an element in the crime of rape and need not be established when intimidation is exercised upon the victim. The victim's failure to shout or offer tenacious resistance did not make voluntary her submission to the criminal acts of her aggressor. Appellant's use of a knife was enough for AAA to submit to his demands. Not every victim can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently.[8]

We remind the appellant 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, especially after the CA as the intermediate reviewing

---

[8] CA *rollo*, p. 124.

tribunals has affirmed the findings, unless there is a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case. In this case, the appellant has not made such showing. Indeed, we have no reason to reverse the well-considered findings and observations of the lower courts.

We do not find the non-presentation of the physician who had examined AAA to affect in any significant manner the credibility of the victim's testimony. After all, the medical findings have never been considered indispensable in supporting convictions for rape. In contrast, we reiterate that the rape victim's testimony, standing alone, can be made the basis of the successful prosecution of the culprit provided such testimony meets the test of credibility.[9]

Anent the sweetheart defense of the appellant, the CA and the trial court justly rejected it. Such defense, being uncorroborated and self-serving, deserved scant consideration. Nonetheless, that the appellant and the victim had been sweethearts was no excuse in the eyes of the law for him to employ force and intimidation in gratifying his carnal desires.[10]

Was the complex crime of forcible abduction with rape committed?

Under Article 342 of the *Revised Penal Code*, the elements of forcible abduction are: (1) the taking of a woman against her will; and (2) with lewd designs. The crime of forcible abduction with rape is a complex crime that occurs when the abductor has carnal knowledge of the abducted woman under the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise

---

[9] *People v. Gapasan*, G.R. No. 110812, March 29, 1995, 243 SCRA 53, 59.

[10] *People v. Taperla*, G.R. No. 142860, January 16, 2003, 395 SCRA 310, 314; *People v. Buendia*, G.R. Nos. 133949-51, September 16, 1999, 314 SCRA 655, 665.

unconscious; and (3) when the woman is under 12 years of age or is demented.

Although the elements of forcible abduction obtained, the appellant should be convicted only of rape. His forcible abduction of AAA was absorbed by the rape considering that his real objective in abducting her was to commit the rape. Where the main objective of the culprit for the abduction of the victim of rape was to have carnal knowledge of her, he could be convicted only of rape.[11]

The penalty of *reclusion perpetua* was properly imposed pursuant to Article 266(B)[12] of the *Revised Penal Code*.[13]

To accord with jurisprudence,[14] the awards of damages are increased as follows: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; and (3) ₱75,000.00 as exemplary damages. Moreover, the CA correctly imposed interest of 6% *per annum* on all such items of civil liability reckoned from the finality of judgment until fully paid.[15]

---

[11] *People v. Sabadlab*, G.R. No. 175924, March 14, 2012, 668 SCRA 237, 248-249; citing *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827; *People v. Muros*, G.R. No. 142511, February 16, 2004, 423 SCRA 69; *People v. Egan*, G.R. No. 139338, May 28, 2002, 382 SCRA 326; *People v. Mejorada*, G.R. No. 102705, July 30, 1993, 224 SCRA 837, 852; *People v. Godines*, G.R. No. 93410, May 7, 1991, 196 SCRA 765, 773.

[12] Art. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

When the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x x x x x x

[13] A.M. No. 15-08-02-SC (*Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*) dated August 4, 2015 in relation to Section 3 of R.A. No. 9346.

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

[15] See *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 824.

WHEREFORE, we **AFFIRM** the decision promulgated on September 24, 2015, with the **MODIFICATION** that accused **SANDY DOMINGO *y* LABIS** is: (*a*) **DECLARED GUILTY BEYOND REASONABLE DOUBT** of **SIMPLE RAPE** as defined under Article 266-A of the *Revised Penal Code* and penalized with *reclusion perpetua*; and (*b*) **ORDERED TO PAY** to AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, plus interest of 6% *per annum* on all the items of civil liability reckoned from the finality of judgment until fully paid.

The accused shall pay the costs of suit.

SO ORDERED.

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

INDEX

INDEX

ACCESS DEVICES REGULATION ACT OF 1998 (R.A. NO. 8484)

Access device — An access device is defined as: any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument); credit card, considered an access device. (Cruz *vs.* People, G.R. No. 210266, June 7, 2017) p. 801

— Sec. 9(a) and (e) make the possession and use of a counterfeit access device as "access device fraud" that is punishable by law; a counterfeit access device is "any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or counterfeit access device"; what is prohibited is the possession and use of a *counterfeit* access device. (*Id.*)

Penalties — Possession of a counterfeit access device is punishable by imprisonment of not less than six (6) years and not more than 10 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher; use of a counterfeit access device is punishable by imprisonment of not less 10 years but not more than 12 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher. (Cruz *vs.* People, G.R. No. 210266, June 7, 2017) p. 801

ACTIONS

Actionable fraud — Criminal fraud may pertain to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the Revised Penal Code. (Information Technology Foundation of the Phils. *vs.* Commission on Elections, G.R. No. 159139, June 6, 2017) p. 400

— Fraud, defined; while the generic concept of fraud is similar for both civil and criminal cases, the term is descriptive rather than substantive; in its specific and substantive sense, a right of action occasioned by fraud is dependent on the law upon which the action is based; based on its nature, actionable fraud may be civil or criminal. (*Id.*)

— There are two broad classes of actionable civil fraud in this jurisdiction; first is fraud that gives rise to an action for damages, generally in case of contravention of the normal fulfillment of obligations or as a tort under the human relations provisions of the Civil Code, as well as in specific instances mentioned by law; second is fraud that creates a vice in the intent of one or more parties in juridical transactions, such as wills, marriages, and contracts, among others; with respect to the latter, fraud may render the contract defective in varying degrees; explained. (*Id.*)

ACTS OF LASCIVIOUSNESS

Civil liability — Discussed. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

Elements — All the elements of acts of lasciviousness under Art. 336 of the RPC in relation to Sec. 5(b) of R.A. No. 7610 are present; Art. III of R.A. No. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse; requisites. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

Penalty — Discussed; relationship of the offender with the child victim, considered as an aggravating circumstance for purposes of increasing the period of imposable penalty for acts of lasciviousness under Art. 336 of the RPC, in relation to Sec. 5(b), Art. III of R.A. No. 7610. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

ADMINISTRATIVE COMPLAINTS

Administrative complaints against lawyers, judges, and justices — Under the Rules of Court, administrative complaints both against lawyers and judges of regular and special courts as well as Justices of the Court of Appeals and the Sandiganbayan must be verified and supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; herein complaints were dismissed. (*RE*: Letter of Lucena Ofendoreyes Alleging Illicit Activities of a Certain Atty. Cajayon Involving Cases in the Court of Appeals, Cagayan De Oro City, A.M. No. 16-12-03-CA, June 6, 2017) p. 369

ADMINISTRATIVE PROCEEDINGS

Burden of proof — In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint; mere allegation is not evidence and is not equivalent to proof; in the absence of contrary evidence, what will prevail is the presumption that the prosecutors involved herein have regularly performed their official duties. (Sps. Chua *vs.* Sacp Tan-Sollano, A.C. No. 11533, June 6, 2017) p. 365

Defense of good faith — The patent disregard of several case laws and COA directives, as in this case, amounts to gross negligence; the petitioners-approving officers' disregard of the aforementioned case laws, COA issuances, and the Constitution, cannot be deemed as a mere lapse consistent with the presumption of good faith. (Tetangco, Jr. *vs*. COA, G.R. No. 215061, June 6, 2017) p. 459

ALIBI AND DENIAL

Defenses of — Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant; alibi and denial, defined. (People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

APPEALS

Factual findings of quasi-judicial agencies — Findings of fact of quasi-judicial agencies are entitled to great respect when they are supported by substantial evidence and, in the absence of any showing of a whimsical or capricious exercise of judgment, the factual findings bind the Court; application. (Sumifru [Philippines] Corp. *vs.* Nagkahiusang Mamumuo sa Suyapa Farm [Namasufa-Naflu-Kmu], G.R. No. 202091, June 7, 2017) p. 692

Factual findings of quasi-judicial bodies — Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality; they are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record; exceptions. (Marlow Navigation Philippines, Inc. *vs.* Heirs of Ganal, G.R. No. 220168, June 7, 2017) p. 956

Factual findings of the COA — Factual findings of the COA are accorded not only respect but also finality and it is only when it acted without or in excess of jurisdiction, or with grave abuse of discretion may a petition for *certiorari* be brought to assail the COA's actions. (Tetangco, Jr. *vs.* COA, G.R. No. 215061, June 6, 2017) p. 459

Factual findings of the Regional Trial Court — Factual findings of the Regional Trial Court, when affirmed by the Court of Appeals, are entitled to great weight and respect by the Court and are deemed final and conclusive when supported by the evidence on record. (People *vs.* Jao *y* Calonia, G.R. No. 225634, June 7, 2017) p. 1028

Factual findings of the trial court — Factual findings of the trial court affirmed by the Court of Appeals, respected;

rationale. (People *vs.* Baay *y* Falco, G.R. No. 220143, June 7, 2017) p. 943

Findings of the trial court — The trial court's assessment of the credibility of witnesses is accorded great weight and respect, especially when affirmed by the Court of Appeals; rationale. (People *vs.* Raytos *y* Espino, G.R. No. 225623, June 7, 2017) p. 1007

Petition for review on certiorari to the Supreme Court under Rule 45 — Batangas City's failure to prove the existence of factual basis to justify the enactment of the Assailed Ordinance had already been passed upon by the lower courts; such findings are binding and conclusive upon this Court, and it is not the Court's function in a petition for review on *certiorari* to examine, evaluate or weigh anew the probative value of the evidence presented before the trial court; no exception to the rule in this case. (City of Batangas *vs.* Philippine Shell Petroleum Corp., G.R. No. 195003, June 7, 2017) p. 566

— It is fundamental that in a petition for review on *certiorari,* the Court is limited to only questions of law; as specifically applied in a labor case, the Court is limited to reviewing only whether the CA was correct in determining the presence or absence of grave abuse of discretion on the part of the DOLE Secretary. (Sumifru [Philippines] Corp. *vs.* Nagkahiusang Mamumuo sa Suyapa Farm [Namasufa-Naflu-Kmu], G.R. No. 202091, June 7, 2017) p. 692

— The factual findings of the National Labor Relations Commission, when confirmed by the Court of Appeals, are usually "conclusive on this Court." (Madridejos *vs.* NYK-FIL Ship Mgmt., Inc., G.R. No. 204262, June 7, 2017) p. 704

— The function of the Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts; the rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and

conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record. (Heirs of Villanueva *vs.* Heirs of Mendoza, G.R. No. 209132, June 5, 2017) p. 172

— The issue of whether a mortgagee is in good faith cannot be entertained in a Rule 45 petition because the ascertainment of good faith or the lack thereof and the determination of negligence are factual issues which lie outside the scope of a petition for review on *certiorari*. (Dadis *vs.* Sps. De Guzman, G.R. No. 206008, June 7, 2017) p. 749

— The jurisdiction of the Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law and does not extend to a re-evaluation of the sufficiency of evidence upon which the courts *a quo* had based its determination; findings of fact of labor tribunals when affirmed by the CA bind this Court. (Javines *vs.* Xlibris *a.k.a.* Author Solutions, Inc., G.R. No. 214301, June 7, 2017) p. 872

— The trial court and the CA's identical findings concerning the assessment of the value of the properties should be accorded the greatest respect, and are binding on the Court, absent proof that they committed error in establishing the facts and in drawing conclusions therefrom; the Court is not a trier of facts and the rule that petitions brought under Rule 45 may only raise questions of law equally applies to expropriation cases. (Rep. of the Phils. *vs.* Cebuan, G.R. No. 206702, June 7, 2017) p. 767

— While as a general rule, only errors of law are reviewed by the Court in petitions for review under Rule 45, one of the well-recognized exceptions to this rule is when the factual findings of the NLRC contradict those of the labor arbiter; applied. (Doble, Jr. *vs.* ABB, Inc./Nitin Desai, G.R. No. 215627, June 5, 2017) p. 210

Points of law, issues, theories, and arguments — Factual findings of the trial court as affirmed by the appellate court, sustained; no reason at all to overturn such findings of facts and conclusions of law. (People *vs.* Soriano *y* Narag, G.R. No. 216063, June 5, 2017) p. 239

— For failure to file the requisite petition before the CA, the NLRC decision had attained finality and had been placed beyond the appellate court's power of review. Settled are the rules that a decision becomes final as against a party who does not appeal the same and an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. (Javines *vs.* Xlibris *a.k.a.* Author Solutions, Inc., G.R. No. 214301, June 7, 2017) p. 872

Question of law — A petition for review under Rule 45 should only cover questions of law since questions of fact are generally not reviewable; a question of law exists when the doubt centers on what the law is on a certain set of facts while a question of fact results when the issue revolves around the truth or falsity of the alleged facts; test of whether a question is one of law or of fact, explained. (Heirs of Villanueva *vs.* Heirs of Mendoza, G.R. No. 209132, June 5, 2017) p. 172

ARRESTS

Hot pursuit arrest — An arrest under Rule 113, Sec. 5(b) of the Rules of Court entails a time element from the moment the crime is committed up to the point of arrest; law enforcers need not personally witness the commission of a crime; however, they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

Warrantless arrest — There are three (3) grounds that will justify a warrantless arrest, pursuant to Rule 113, Sec. 5 of the Revised Rules of Criminal Procedure; the first kind of warrantless arrest is known as an *in flagrante*

delicto arrest; two elements that must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

ATTORNEYS

Disbarment — In view of respondent's act of using a false MCLE compliance number in his pleadings, his repeated failure to obey legal orders, and the fact that he had already been sanctioned twice by the Court on separate cases, the Court is constrained to disbar respondent from the practice of law. (Mapalad, Sr. *vs.* Atty. Echanez, A.C. No. 10911, June 6, 2017) p. 355

BILL OF RIGHTS

Equal protection of the law — An ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law; the requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. (Mindanao Shopping Destination Corp., *vs.* Duterte*,* G.R. No. 211093, June 6, 2017) p. 427

Right against unlawful searches and seizures — Art. III, Sec. 3(2) of the Constitution considers any evidence obtained in violation of this right as inadmissible; the requirements of a valid search warrant are laid down in Art. III, Sec. 2 of the Constitution and reiterated in Rule 126, Sec. 4 of the Rules on Criminal Procedure. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

— The following are recognized instances of permissible warrantless searches laid down in jurisprudence: (1) a "warrantless search incidental to a lawful arrest," (2) search of "evidence in 'plain view,'" (3) "search of a

moving vehicle," (4) "consented warrantless searches," (5) "customs search," (6) "stop and frisk," and (7) "exigent and emergency circumstances." (*Id.*)

CERTIORARI

Petition for — In a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, the primordial issue to be resolved is whether the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution; grave abuse of discretion, defined; the Court will not interfere with the resolutions of the COMELEC unless it is shown that it had committed grave abuse of discretion. (Albania *vs.* Commission on Elections, G.R. No. 226792, June 6, 2017) p. 470

— The Court of Appeals gravely erred when it dismissed the petition and refused to reinstate the same despite the fact that the two defects noted in the resolution were substantially rectified; explained. (Doble, Jr. *vs.* ABB, Inc./Nitin Desai, G.R. No. 215627, June 5, 2017) p. 210

CLERKS OF COURT

Simple neglect of duty — Defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference, a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense under Sec. 46 (D) of the RRACCS; the penalty of fine imposed instead of suspension in this case. (Olympia-Geronilla *vs.* Montemayor, Jr.*,* A.M. No. P-17-3676, (Formerly OCA IPI No. 12-3985-P), June 5, 2017) p. 1

— Failure to take a more decisive action against a sheriff's unwarranted refusal to enforce the MCTC Decision constitutes simple neglect of duty; although she may have advised and/or reminded him with respect to the performance of his duties, her apparently lackadaisical

attitude in this matter evinces a similar failure on her part to perform her duty of effectively supervising him. (*Id.*)

COMMISSION ON ELECTIONS

Powers — The Constitution has vested in the COMELEC broad powers, involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections, but also the resolution and determination of election controversies; it also granted the COMELEC the power and authority to promulgate its rules of procedure. (Albania *vs.* Commission on Elections, G.R. No. 226792, June 6, 2017) p. 470

COMMISSION ON AUDIT (COA)

Functions — COA, as the duly authorized agency to adjudicate money claims against government agencies and instrumentalities, has acquired special knowledge and expertise in handling matters falling under its specialized jurisdiction. (Tetangco, Jr., *vs.* COA, G.R. No. 215061, June 6, 2017) p. 459

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, substantial compliance with the legal requirement on the handling of the seized item is sufficient; the most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. (People *vs.* Pardillo, G.R. No. 219590, June 7, 2017) p. 911

— In a buy-bust operation, the following links are necessary in order to establish the chain of custody; (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of

the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court; what is of utmost importance is the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused. (People *vs.* Cutara *y* Brix, G.R. No. 224300, June 7, 2017) p. 999

Chain of custody requirement — The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items such that doubts as to the identity of the evidence are eliminated; to be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. (People *vs.* Tripoli, G.R. No. 207001, June 7, 2017) p. 788

Illegal delivery and illegal possession of dangerous drugs — Elements, established. (People *vs.* Jao *y* Calonia, G.R. No. 225634, June 7, 2017) p. 1028

Illegal sale of dangerous drugs — Prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor; the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. (People *vs.* Cabiles *y* Suarez *a.k.a.* "Kano", G.R. No. 220758, June 7, 2017) p. 969

— To secure a conviction for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment; the prosecution must also prove the illegal sale of the dangerous drugs and

present the *corpus delicti* in court as evidence. (People *vs.* Cutara *y* Brix, G.R. No. 224300, June 7, 2017) p. 999

Illegal sale of shabu — The essential elements for illegal sale of *shabu* are as follows: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing; explained. (People *vs.* Tripoli, G.R. No. 207001, June 7, 2017) p. 788

— The penalty for unauthorized sale of *shabu* under Sec. 5, Art. II of R.A. 9165, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from PhP500,000 to PhP10,000,000; however, with the enactment of R.A. 9346, only life imprisonment and a fine shall be imposed. (People *vs.* Cabiles *y* Suarez *a.k.a.* "Kano", G.R. No. 220758, June 7, 2017) p. 969

Presentation of informant — Accused-appellants' argument that the failure to present the informant is fatal to the prosecution's cause fails to impress; there is no need to present the informant/poseur-buyer/police asset; explained. (People *vs.* Tripoli, G.R. No. 207001, June 7, 2017) p. 788

COMPROMISES

Judgment on compromise — A judgment on compromise that has attained finality cannot be "modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land." (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

— It can neither be wider in scope nor exceed the judgment that gives it life; otherwise, it has no validity; in issuing writs of execution, courts must look at the terms of the judgment sought to be enforced. (*Id.*)

Judicial compromise — A judicial compromise is regarded as a "determination of the controversy" between the parties and "has the force and effect of a final judgment"; it is

both a contract and "a judgment on the merits"; it may neither be disturbed nor set aside except in cases where there is forgery or when either of the parties' consent has been vitiated. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

Kinds — A compromise is defined under the Civil Code as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced"; it may either be judicial or extrajudicial depending on its object or the purpose of the parties; judicial and extrajudicial compromise, explained. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

CONTRACTS

Contract of adhesion — That the portion on the mortgagor's address was left in blank cannot be simply swept under the rug as "an expression of general intent" that cannot prevail over the parties' specific intent not to require personal notice; the real estate mortgages in this case are contracts of adhesion, and in case of doubt, the doubt should be resolved against the party who prepared it. (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

Voidable contracts — Under Art. 1344 of the Civil Code, the fraud must be serious to annul or avoid a contract and render it voidable; this fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract; not applicable in present case. (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

CORPORATION CODE

Liability for damages of officers or agents of the corporation — Sec. 74 of the Corporation Code provides for the liability for damages of any officer or agent of the corporation for refusing to allow any director, trustee,

stockholder or member of the corporation to examine and copy excerpts from its records or minutes; Sec. 144 of the same Code further provides for other applicable penalties in case of violation of any provision of the Corporation Code; elements to prove any violation under the aforementioned provisions, enumerated. (Roque *vs.* People, G.R. No. 211108, June 7, 2017) p. 852

CORPORATIONS

Right of members to examine the records — The revocation of a corporation's certificate of registration does not automatically warrant the extinction of the corporation itself such that its rights and liabilities are likewise altogether extinguished; application. (Roque *vs.* People, G.R. No. 211108, June 7, 2017) p. 852

COURT OF APPEALS

Powers — While it is true that the appellate court is given broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, it has authority to do so in the following instances: (a) when the question affects jurisdiction over the subject matter; (b) matters that are evidently plain or clerical errors within contemplation of law; (c) matters whose consideration is necessary in arriving at a just decision and complete resolution of the case, or in serving the interests of justice or avoiding dispensing piecemeal justice; (d) matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored; (e) matters closely related to an error assigned; and (f) matters upon which the determination of a question properly assigned is dependent. (Javines *vs.* Xlibris *a.k.a.* Author Solutions, Inc., G.R. No. 214301, June 7, 2017) p. 872

COURTS

Doctrine of hierarchy of courts — Although this Court has

the power to issue extraordinary writs of *certiorari*, prohibition, and mandamus, it is by no means an exclusive power; it is shared concurrently with the Court of Appeals and the Regional Trial Courts; the doctrine determines the proper venue or choice of forum where petitions for *certiorari*, prohibition, and mandamus should be filed. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

— The doctrine on hierarchy of courts prohibits "parties from directly resorting to this Court when relief may be obtained before the lower courts"; rationale. (*Id.*)

Powers — Under our constitutional structure, courts of law have no right to directly decide matters over which full discretionary authority has been delegated to another office or branch of government; separation of powers is not merely a hollow doctrine in constitutional law; rather, it serves a very important purpose in our democratic republic government, that is, to prevent tyranny by prohibiting the concentration of the sovereign powers of state in one body. (Information Technology Foundation of the Phils. *vs.* Commission on Elections, G.R. No. 159139, June 6, 2017) p. 400

CRIMINAL LIABILITY, EXTINGUISHMENT OF

Death of the accused — Criminal liability is totally extinguished by the death of the accused; thus, upon accused-appellant'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 the civil liability *ex delicto* is *ipso facto* extinguished; for civil liability based on sources other than delicts, the victim may file a separate civil action against the estate of the accused. (People *vs.* Culas *y* Raga, G.R. No. 211166, June 5, 2017) p. 205

— The death of the accused pending appeal of his conviction extinguishes his criminal liability; as such, the criminal cases against him should be dismissed and declared closed

and terminated. (People *vs.* Jao *y* Calonia, G.R. No. 225634, June 7, 2017) p. 1028

Variance between allegation and proof — The rulings of the RTC and the CA are consistent with Sec. 4, in relation to Sec. 5, of Rule 120 of the Rules on Criminal Procedure which provide for the "variance doctrine"; applying the variance doctrine to this case, the accused, who was charged with one (1) count of rape by sexual assault, can still be convicted of acts of lasciviousness under Sec. 5(b), Art. III of R.A. No. 7610. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

DENIAL

Defense of — Denial cannot prevail against the positive testimony of a prosecution witness; a defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. (People *vs.* Cabiles *y* Suarez *a.k.a.* "Kano", G.R. No. 220758, June 7, 2017) p. 969

DENIAL AND ALIBI

Defenses of — Denial and alibi are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused; a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence. (People *vs.* Alberca, G.R. No. 217459, June 7, 2017) p. 896

— Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility; for alibi to prosper, it must be demonstrated that it was physically impossible for

appellant to be present at the place where the crime was committed at the time of commission. (People *vs.* Bentayo, G.R. No. 216938, June 5, 2017) p. 263

— Failure of the accused to establish that it was physically impossible for him to be at the place when the crime was committed, his defense of denial and alibi cannot stand. (People *vs.* Amoc *y* Mambatalan, G.R. No. 216937, June 5, 2017) p. 253

— Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. (People *vs.* Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

— The accused-appellant's uncorroborated denial and alibi cannot prevail over the credible and positive testimony of the rape victim. (People *vs.* Agudo *y* Del Valle, G.R. No. 219615, June 7, 2017) p. 918

— The victim's positive and credible testimony, coupled with the medical findings, deserves more persuasive weight than the accused's bare denial and *alibi*, which are self-serving defenses that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters and positively identified him as the perpetrator of the crimes. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

DOUBLE JEOPARDY

Elements — It is elementary that double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent; it does not attach where the dismissal of the criminal case was granted upon motion of the accused. (David *vs.* Marquez, G.R. No. 209859, June 5, 2017) p. 187

Right of accused against double jeopardy — The prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case due to the final and executory nature of a judgment of acquittal and the constitutional prohibition against double jeopardy; when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari,* the right of the accused against double jeopardy is not violated. (David *vs.* Marquez, G.R. No. 209859, June 5, 2017) p. 187

EMINENT DOMAIN

Just compensation — In expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator; the word "just" is used to intensify the meaning of the word compensation and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. (Rep. of the Phils. *vs.* Cebuan, G.R. No. 206702, June 7, 2017) p. 767

— Just compensation is defined as the full and fair equivalent of the property sought to be expropriated; the measure is not the taker's gain but the owner's loss; how determined. (Rep. of the Phils. *vs.* Sps. Salvador, G.R. No. 205428, June 7, 2017) p. 742

— The determination of just compensation in expropriation cases is a function addressed to the discretion of the courts owing to the constitutional mandate that no private property shall be taken for public use without payment of just compensation; legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives; effect. (*Id.*)

— While as a general rule, just compensation, to which the owner of the property to be expropriated is entitled, is equivalent to the market value, the rule is modified

where only a part of a certain property is expropriated; discussed. (*Id.*)

— It has been settled that the payment of just compensation for the expropriated property amounts to an effective forbearance on the part of the state, in the instant case, the interest is to be imposed only on the balance of the final just compensation, *i.e.,* just compensation as computed by the RTC *(sans* the award for unrealized income) less the amount of the provisional compensation. (*Id.*)

EMPLOYEES, TYPES OF

Positions of trust and confidence — There are two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees; explained. (Bravo *vs.* Urios College [now Father Saturnino Urios University], G.R. No. 198066, June 7, 2017) p. 603

EMPLOYMENT, TERMINATION OF

Abandonment — The act of some of the respondents of gaining employment as security guards elsewhere constituted abandonment of their employment with the petitioner; two elements, namely: *one,* the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, *two,* there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. (Spectrum Security Services, Inc. *vs.* Grave, G.R. No. 196650, June 7, 2017) p. 590

Illegal dismissal — Not a case of; respondents were able to prove that petitioner voluntarily resigned. (Doble, Jr. *vs.* ABB, Inc./Nitin Desai, G.R. No. 215627, June 5, 2017) p. 210

— The general rule is that the employer has the burden of proving that the dismissal was legal; to discharge this burden, the employee must first prove, by substantial evidence, that he had been dismissed from employment;

when not applicable. (Spectrum Security Services, Inc. *vs.* Grave, G.R. No. 196650, June 7, 2017) p. 590

Misconduct — Gambling during office hours, sexual intercourse within company premises, sexual harassment, sleeping while on duty, and contracting work in competition with the business of one's employer are among those considered as serious misconduct for which an employee's services may be terminated. (Bravo *vs.* Urios College [now Father Saturnino Urios University], G.R. No. 198066, June 7, 2017) p. 603

— To warrant the dismissal from service of a rank-and-file employee under Art. 297(a) of the Labor Code, the misconduct (1) must be serious, (2) should "relate to the performance of the employee's duties," (3) should render the employee "unfit to continue working for the employer," and (4) should "have been performed with wrongful intent." (*Id.*)

Procedural due process — In termination based on just causes, the employer must comply with procedural due process by furnishing the employee a written notice containing the specific grounds or causes for dismissal; the notice must also direct the employee to submit his or her written explanation within a reasonable period from the receipt of the notice; afterwards, the employer must give the employee ample opportunity to be heard and defend himself or herself; formal hearing, when mandatory; finally, the employer must serve a notice informing the employee of his or her dismissal from employment. (Bravo *vs.* Urios College [now Father Saturnino Urios University], G.R. No. 198066, June 7, 2017) p. 603

Willful breach of trust — A dismissal based on willful breach of trust or loss of trust and confidence under Art. 297 of the Labor Code entails the concurrence of two (2) conditions; enumerated. (Bravo *vs.* Urios College [now Father Saturnino Urios University], G.R. No. 198066, June 7, 2017) p. 603

— Different rules apply in determining whether loss of trust and confidence may validly be used as a justification in termination cases; the prerogative of employers in dismissing a managerial employee "must be exercised without abuse of discretion"; valid dismissal in this case. (*Id.*)

ESTAFA UNDER ARTICLE 315 (2)(a)

Elements — The elements of estafa are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation; application. (People *vs.* Matheus *y* Delos Reyes, G.R. No. 198795, June 7, 2017) p. 626

ESTOPPEL

Doctrine of — Respondents' action to compel petitioner to return what was mistakenly delivered is now barred by the doctrine of estoppel; the doctrine is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon; exceptions. (Bartolata *vs.* Rep. of the Phils., G.R. No. 223334, June 7, 2017) p. 978

EVIDENCE

Dying declaration — A dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death. (People *vs.* Macaraig *y* Gonzales, G.R. No. 219848, June 7, 2017) p. 931

Judicial notice — In this jurisdiction, courts are not authorized to "take judicial notice of foreign laws"; the laws of a foreign country must "be properly pleaded and proved" as facts; otherwise, under the doctrine of processual presumption, foreign law shall be presumed to be the same as domestic law. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

Presentation of — When the notarization is defective, the public character of the document is stripped off and it is reduced to a mere private document that should be examined under the parameters of Sec. 20, Rule 132 of the Rules, providing that "before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either *(a)* by anyone who saw the document executed or written, or *(b)* by evidence of the genuineness of the signature or handwriting of the maker." (Dadis *vs.* Sps. De Guzman, G.R. No. 206008, June 7, 2017) p. 749

Presumption of regularity and authenticity of a notarized document — When a private document is notarized, the document is converted to a public document which is presumed regular, admissible in evidence without need for proof of its authenticity and due execution, and entitled to full faith and credit upon its face; to overturn the presumption in favor of a notarized document, the party questioning it must present "clear, convincing, and more than merely preponderant evidence." (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

Substantial evidence — Substantial evidence is "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." (Sumifru [Philippines] Corp. *vs*. Nagkahiusang Mamumuo sa Suyapa Farm [Namasufa-Naflu-Kmu], G.R. No. 202091, June 7, 2017) p. 692

Testimony of minor rape victim — When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped; when the offended

party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. (People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Right to redeem — Ruling in *Consolidated Bank & Trust Company vs. Intermediate Appellate Court,* not precedent for the present case. (Mahinay *vs.* Dura Tire & Rubber Industries, Inc., G.R. No. 194152, June 5, 2017) p. 57

— The one-year period of redemption is fixed, hence, non-extendible, to "avoid prolonged economic uncertainty over the ownership of the thing sold"; it cannot be tolled or interrupted by the filing of cases to annul the foreclosure sale or to enforce the right of redemption. (*Id.*)

— The right to redeem the mortgaged property arose when the mortgaged property was extrajudicially foreclosed and sold at public auction; the right of redemption being statutory, the mortgagor may compel the purchaser to sell back the property within the one (1)-year period under Act No. 3135. (*Id.*)

FAMILY CODE

Conjugal partnership — The sale (or encumbrance) of conjugal property without the consent of the husband was not merely voidable but void; hence, it could not be ratified; a void contract is equivalent to nothing and is absolutely wanting in civil effects; it cannot be validated either by ratification or prescription. (Dadis *vs.* Sps. De Guzman, G.R. No. 206008, June 7, 2017) p. 749

FORCIBLE ABDUCTION WITH RAPE

Elements — The crime of forcible abduction with rape is a complex crime that occurs when the abductor has carnal knowledge of the abducted woman under the following circumstances: (1) by using force or intimidation; (2)

when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under 12 years of age or is demented. (People *vs.* Domingo *y* Labis, G.R. No. 225743, June 7, 2017) p. 1040

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Defense of ownership — It is settled that the issue of ownership may be resolved only to determine the issue of possession. (Mendiola *vs.* Sangalang, G.R. No. 205283, June 7, 2017) p. 734

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Mandatory post-qualification procedure — Mere submission of the lowest bid did not automatically entitle them to an award; their bid must still undergo post-qualification/ evaluation; effects of non-compliance with the requirement; application. (Dept. of Public Works and Highways (DPWH) *vs.* Malaga, G.R. No. 204906, June 5, 2017) p. 88

— Respondent has no cause of action for damages under Art. 27 of the Civil Code; proper remedy for respondent. (*Id.*)

ILLEGAL DISMISSAL

Reliefs of an illegally dismissed employee — Under Art. 294 of the Labor Code, the reliefs of an illegally dismissed employee are reinstatement and full backwages; backwages is a form of relief that restores the income that was lost by reason of the employee's dismissal from employment; how computed; when reinstatement is no longer feasible, separation pay is awarded. (Bravo *vs.* Urios College [now Father Saturnino Urios University], G.R. No. 198066, June 7, 2017) p. 603

ILLEGAL RECRUITMENT IN LARGE SCALE

Elements — The offense of illegal recruitment in large scale has the following elements: (1) the person charged undertook any recruitment activity as defined under Sec. 6 of RA 8042; (2) accused did not have the license or

the authority to lawfully engage in the recruitment of workers; and (3) accused committed the same against three or more persons individually or as a group. (People *vs.* Matheus *y* Delos Reyes, G.R. No. 198795, June 7, 2017) p. 626

INHERENT POWERS OF THE STATE

Power to tax — For the purpose of rectifying the erroneous classification of wholesaler and retailer in the old ordinance in order to conform to the classification and the tax rates as imposed by the LGC is neither invalid nor unreasonable; it is inherent in the power to tax that a State is free to select the subjects of taxation. (Mindanao Shopping Destination Corp. *vs.* Duterte, G.R. No. 211093, June 6, 2017) p. 427

JUDGES

Conduct unbecoming of a judge — The act of a judge of demanding for complainant's firearms and in an aggressive manner effectively harassed the already nervous police officer; regardless of the reason or motive behind the altercation, a judge should observe judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language; penalty. (PO1 Marcelo *vs.* Judge Barcillano, A.M. No. RTJ-16-2450 [Formerly A.M. No. 14-4324-RTJ], June 7, 2017) p. 488

Gross misconduct — Violation of Canon 2 of the Code of Judicial Conduct, a case of; penalty. (*RE*: Anonymous Letter Complaint *vs.* Judge Divina T. Samson, Municipal Circuit Trial Court, Mabini-Pantukan, Compostela Valley, et al., A.M. No. MTJ-16-1870 [Formerly OCA I.P.I. No. 16-2833-MTJ], June 6, 2017) p. 384

JUDGMENTS

Doctrine on immutability of judgments — The doctrine on immutability of judgments applies to compromise agreements approved by the courts in the same manner that it applies to judgments that have been rendered on

the basis of a full-blown trial. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

Execution of — Ordinarily, courts have the ministerial duty to grant the execution of a final judgment; they have jurisdiction to entertain motions to quash previously issued writs of execution; they "have the inherent power, for the advancement of justice, to correct the errors of their ministerial officers and to control their own processes." (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

Immutability of judgments — A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land; rationale. (Emerald Garment Mfg. Corp. *vs.* H.D. Lee Co., Inc., G.R. No. 210693, June 7, 2017) p. 835

Writ of execution — A writ of execution may be stayed or quashed when "facts and circumstances transpire" after judgment has been rendered that would make "execution impossible or unjust"; another exception is when the writ of execution alters or varies the judgment; discussed. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

JUDICIAL DEPARTMENT

Judicial power — The Constitution vests the Supreme Court with judicial power, defined under Sec. 1, Art. VIII as "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government"; conspicuously absent in the provision is the power of the judiciary to prosecute crimes—much less the broader power to execute

laws from which it can be inferred. (Information Technology Foundation of the Phils. *vs.* Commission on Elections, G.R. No. 159139, June 6, 2017) p. 400

JUSTIFYING CIRCUMSTANCES

Self-defense — A plea of self-defense admits the commission of the act charged as a crime; the *onus probandi* falls on the accused to prove that such killing was justified – failure to discharge which renders the act punishable; to exonerate himself, the accused must establish: (i) that there was unlawful aggression by the victim; (ii) that the means employed to prevent or repel such aggression were reasonable; and (iii) that there was lack of sufficient provocation on his part. (People *vs.* Raytos *y* Espino, G.R. No. 225623, June 7, 2017) p. 1007

— Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act; well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense. (People *vs.* Macaraig *y* Gonzales, G.R. No. 219848, June 7, 2017) p. 931

— The act of drawing a knife from the waist could not be categorized as unlawful aggression, for there was yet no actual risk or peril to the life or limb of the accused; application. (*Id.*)

— To invoke self-defense, in order to escape criminal liability, it is incumbent upon the accused to prove by clear and convincing evidence the concurrence of the following requisites under the second paragraph of Art. 11 of the RPC, *viz.*: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. (*Id.*)

— When an unlawful aggression that has begun has ceased to exist, the one who resorts to self-defense has no right to kill or even to wound the former aggressor; aggression,

if not continuous, does not constitute aggression warranting defense of one's self. (*Id.*)

KIDNAPPING

Commission of — In order to prove kidnapping, the prosecution must establish that the victim was "forcefully transported, locked up or restrained;" it must be proven that the accused intended "to deprive the victim of his liberty." (People *vs.* Avancena *y* Cabanela, G.R. No. 200512, June 7, 2017) p. 672

KIDNAPPING FOR RANSOM

Elements — In kidnapping for ransom, the prosecution must be able to establish the following elements: *first*, the accused was a private person; *second*, he or she kidnapped or detained or in any manner deprived another of his or her liberty; *third*, the kidnapping or detention was illegal; and *fourth*, the victim was kidnapped or detained for ransom. (People *vs.* Avancena *y* Cabanela, G.R. No. 200512, June 7, 2017) p. 672

LABOR CODE

Security of tenure — Security guards are entitled to security of tenure and only when the period of their reserved or off-detail status exceeds the reasonable period of six months without re-assignment should the affected security guards be regarded as dismissed. (Spectrum Security Services, Inc. *vs.* Grave, G.R. No. 196650, June 7, 2017) p. 590

LACHES

Concept and elements — Distinguished from prescription; laches concerns itself with the effect of delay and not the period of time that has lapsed; the defense of laches is based on equity; it is not based on the title of the party invoking it, but on the right holder's "long inaction or inexcusable neglect" to assert his claim. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

— There is laches when a party was negligent or has failed "to assert a right within a reasonable time," giving rise to the presumption that he or she has abandoned it; there is laches when: (1) the conduct of the defendant or one under whom he claims, gave rise to the situation complained of; (2) there was delay in asserting a right after knowledge of the defendant's conduct and after an opportunity to sue; (3) defendant had no knowledge or notice that the complainant would assert his right; and (4) there is injury or prejudice to the defendant in the event relief is accorded to the complainant; clearly lacking in this case. (*Id.*)

LAND REGISTRATION

Reconveyance — A complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful; it seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

— Under Art. 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims of having a better right to it must prove two (2) things: *first*, the identity of the land claimed and *second*, his title to the same; application. (Heirs of Villanueva *vs.* Heirs of Mendoza, G.R. No. 209132, June 5, 2017) p. 172

Reconveyance and annulment of title — A complaint for reconveyance is a remedy where the plaintiff argues for an order for the defendant to transfer its title issued in a proceeding not otherwise invalid; an action for annulment of title, on the other hand, questions the validity of the grant of title on grounds which amount to lack of due process of law. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

— An action for reconveyance and annulment of title does not seek to question the contract which allowed the adverse party to obtain the title to the property; what is put on issue in an action for reconveyance and cancellation of title is the ownership of the property and its registration; thus, an action for reconveyance and cancellation of title prescribes in 10 years from the time of the issuance of the Torrens title over the property. (*Id.*)

— Where an action is one for reconveyance and annulment of title, the regional trial court has jurisdiction to hear the case. (*Id.*)

Tax declarations — Tax declarations and receipts are not conclusive evidence of ownership or of the right to possess a land when not supported by any other evidence; these are merely *indicia* of a claim of ownership. (Heirs of Villanueva *vs.* Heirs of Mendoza, G.R. No. 209132, June 5, 2017) p. 172

Torrens system — Registration under the Torrens system "is not a mode of acquiring ownership"; a certificate is only a proof of ownership; its issuance does not foreclose the possibility of having a different owner, and it cannot be used against the true owner as a shield for fraud. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

Torrens title — When the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. (Mendiola *vs.* Sangalang, G.R. No. 205283, June 7, 2017) p. 734

LOCAL GOVERNMENT CODE (LGC)

Local taxation and fiscal matters — Sec. 191 of the LGC presupposes that the following requirements are present for it to apply, to wit: (i) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (ii) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax

ordinance; in the instant case, both elements are not present. (Mindanao Shopping Destination Corp. *vs.* Duterte*,* G.R. No. 211093, June 6, 2017) p. 427

— Sec. 191 of the LGC will not apply because with the assailed tax ordinance, there is no outright or unilateral increase of tax to speak of; petitioners, being retailers, are subject to the tax rate provided under Sec. 69 (d) and not under Sec. 69 (b) of the assailed ordinance; it must be emphasized that the adjustment was not by virtue of a unilateral increase of the tax rate of petitioners as retailers, but again, merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the provisions of the LGC. (*Id.*)

— The amendment of the old tax ordinance was not intended to abuse the LGU's taxing powers but merely sought to impose the rates as provided under the LGC as in fact the tax rate imposed was even lower than the rate authorized by the LGC. (*Id.*)

Tax on business — It is but fair and reasonable that Davao City at its initial implementation of the LGC, impose the tax rates as provided in Sec. 143; it is only then that the imposition of the tax rate on retailers will not be considered as confiscatory or oppressive, considering that the reclassification of wholesaler and retailer and their corresponding tax rate being observed now is in accord with the LGC. (Mindanao Shopping Destination Corp. *vs.* Duterte*,* G.R. No. 211093, June 6, 2017) p. 427

Three-term limit rule — The three-term limit rule is embodied in Sec. 8 of Art. X of the Constitution, which is restated in Sec. 43 of the Local Government Code; objective. (Albania *vs.* Commission on Elections, G.R. No. 226792, June 6, 2017) p. 470

— Two conditions must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule, which are: (1) that the official concerned has been elected for three consecutive terms

in the same local government post, and (2) that he has fully served three consecutive terms; application. (Albania *vs.* Commission on Elections, G.R. No. 226792, June 6, 2017) p. 470

LOCAL GOVERNMENTS

Ordinance — In order for an ordinance to be valid, it must not only be within the corporate powers of the concerned LGU to enact, but must also be passed in accordance with the procedure prescribed by law; substantively, the ordinance: (i) must not contravene the Constitution or any statute; (ii) must not be unfair or oppressive; (iii) must not be partial or discriminatory; (iv) must not prohibit, but may regulate trade; (v) must be general and consistent with public policy; and (vi) must not be unreasonable. (City of Batangas *vs.* Philippine Shell Petroleum Corp., G.R. No. 195003, June 7, 2017) p. 566

— The Assailed Ordinance effectively contravenes the provisions of the Water Code as it arrogates unto Batangas City the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, pertains solely to the NWRB; by enacting the Assailed Ordinance, Batangas City acted in excess of the powers granted to it as an LGU, rendering the Assailed Ordinance *ultra vires*. (*Id.*)

Police power — In furtherance of the State's policy to foster genuine and meaningful local autonomy, the national legislature delegated the exercise of police power to local government units as agents of the State; such delegation can be found in Sec. 16 of the LGC, which embodies the general welfare clause. (City of Batangas *vs.* Philippine Shell Petroleum Corp., G.R. No. 195003, June 7, 2017) p. 566

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — An illegal recruitment case may be filed in the place where the offended party actually resides

at the time of the commission of the offense; dismissal of the case on a wrong ground constitutes grave abuse of discretion. (David *vs.* Marquez, G.R. No. 209859, June 5, 2017) p. 187

MORTGAGES

Doctrine of mortgagee in good faith — The doctrine of mortgagee in good faith presupposes that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his or her name and that, after obtaining the said title, he or she succeeds in mortgaging the property to another who relies on what appears on the said title; the protection cannot be extended to mortgagees of properties that are not yet registered with the Register of Deeds or registered but not under the mortgagor's name. (Dadis *vs.* Sps. De Guzman, G.R. No. 206008, June 7, 2017) p. 749

Dragnet clause — Refers to a stipulation in a real estate mortgage that extends the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract; where there are several advances, however, a mortgage containing a dragnet clause will not be extended to cover future advances, unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor or unless there are clear and supportive evidence to the contrary. (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

Mortgage contract — It is well settled that while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract; an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract. (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

MOTION TO QUASH

Grounds — Lack of jurisdiction over the person of an accused as a result of an invalid arrest must be raised through a motion to quash before an accused enters his or her plea; otherwise, the objection is deemed waived and an accused is "estopped from questioning the legality of his [or her] arrest"; effect of voluntary submission of an accused to the jurisdiction of the court and his or her active participation during trial; reason for this rule. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

MURDER

Civil liability and damages — It is proper to award temperate damages since the heirs of the victim suffered a loss but could not produce documentary evidence to support their claims"; civil indemnity, moral damages, and exemplary damages, discussed. (People *vs.* Soriano *y* Narag, G.R. No. 216063, June 5, 2017) p. 239

Penalty and damages — The Court affirms the penalty of *reclusion perpetua* imposed upon the accused-appellant; award of civil indemnity and actual damages, affirmed; the award of the other damages should be modified, in accordance with the prevailing jurisprudence. (People *vs.* Macaraig *y* Gonzales, G.R. No. 219848, June 7, 2017) p. 931

OBLIGATIONS AND CONTRACTS

Solidary liability — Solidary liability under Philippine law is not to be inferred lightly but must be clearly expressed; under Art. 1207 of the Civil Code, there is solidary liability when "the obligation expressly so states, or when the law or the nature of the obligation requires solidarity"; application. (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Art. 1293 of the Civil Code defines novation as "consists in substituting a new debtor in the place of the

original one, [which] may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor"; explained. (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

OMBUDSMAN, OFFICE OF THE

Investigative and prosecutorial powers — As a general rule, the Court does not intervene with the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service; rationale. (Information Technology Foundation of the Phils. *vs.* Commission on Elections, G.R. No. 159139, June 6, 2017) p. 400

— The Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion; to justify judicial intrusion into what is fundamentally the domain of another constitutional body, the petitioner must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making her determination and in arriving at the conclusion she reached. (*Id.*)

Jurisdiction — Sec. 10 of R.A. No. 6713 vests upon heads of executive departments the authority to ensure faithful compliance with the SALN requirement; however, it does not strip the Ombudsman of its sole power to investigate and prosecute, *motu proprio* or upon complaint of any person, any public official or employee for acts or omissions which appear to be illegal, unjust, improper, or inefficient. (De Castro *vs.* Field Investigation Office, Office of the Ombudsman, G.R. No. 192723, June 5, 2017) p. 31

OMNIBUS ELECTION CODE

Certificate of candidacy — Sec. 74 of the OEC provides that the certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; the word "eligible" in Sec. 74 means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office; violation of the three-term limit rule is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a COC under Sec. 78 of the Omnibus Election Code. (Albania *vs.* Commission on Elections, G.R. No. 226792, June 6, 2017) p. 470

— Petition filed under Sec. 78 of the OEC must comply with the period prescribed therein, *i.e.*, the filing of the same must be made not later than twenty-five days from the time of the filing of the certificate of candidacy; application. (*Id.*)

PARTIES

Indispensable parties — An indispensable party is the party whose legal presence in the proceeding is so necessary that "the action cannot be finally determined" without him or her because his or her interests in the matter and in the relief "are so bound up with that of the other parties." (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

Necessary parties — The property owners against whom the action for reconveyance is filed are indispensable parties; necessary parties may be joined in the case "to adjudicate the whole controversy," but the case may go on without them because a judgment may be rendered without any effect on their rights and interests. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT

Death benefits — In case of death of the seafarer, Sec. 20(B) of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, as amended in 2010, provides that the death of a seafarer by reason of any work-related injury or illness during the term of his employment is compensable. (Marlow Navigation Philippines, Inc. *vs.* Heirs of Ganal, G.R. No. 220168, June 7, 2017) p. 956

Work-related illness — A sebaceous cyst is not included under Sec. 32 or 32-a of the 2000 Philippine Overseas Employment Administration Standard Employment Contract; however, the guidelines expressly provide that those illnesses not listed in Sec. 32 "are disputably presumed as work-related." (Madridejos *vs.* NYK-FIL Ship Mgmt., Inc., G.R. No. 204262, June 7, 2017) p. 704

— For an illness to be compensable, "it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer"; it is enough that there is "a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had." (*Id.*)

— The requisites for compensable illnesses are provided for under Sec. 20(B) of Philippine Overseas Employment Administration Memorandum Circular No. 9, Series of 2000; a work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A with the conditions set therein satisfied." (*Id.*)

PLEADINGS AND PRACTICE

Failure to plead — Except for the defenses of: (*a*) lack of jurisdiction over the subject matter of the case; (*b*) *litis pendentia;* (*c*) *res judicata;* and/or (*d*) prescription, other defenses must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver thereof; if a defendant fails to raise a defense not specifically excepted in Sec. 1, Rule 9 of the Rules of Court either in a motion to dismiss or in the answer, such defense shall be deemed waived; consequence. (Edron Construction Corp. *vs.* Provincial Government of Surigao Del Sur, G.R. No. 220211, June 5, 2017) p. 347

Filing by registered mail — Sec. 3, Rule 13 of the Rules of Court provides that if a pleading is filed by registered mail, the date of mailing shall be considered as the date of filing; it does not matter when the court actually receives the mailed pleading. (Rep. of the Phils. *vs.* Sps. Salvador, G.R. No. 205428, June 7, 2017) p. 742

PLEDGES AND MORTGAGES

Contract of — The registration of the REM contract is not essential to its validity; Art. 2085 of the Civil Code provides: "Art. 2085. The following requisites are essential to the contracts of pledge and mortgage: (1) That they be constituted to secure the fulfillment of a principal obligation; (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged; and (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose; third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property." (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

PRELIMINARY INVESTIGATION

Concept — Preliminary investigation is not part of trial and is conducted only to establish whether probable cause

exists; consequently, it is not subject to the same due process requirements that must be present during trial; this Court has held that during preliminary investigation, the Ombudsman is not required to furnish a respondent with the counter-affidavits of his co-respondents. (Reyes *vs.* Office of the Ombudsman, G.R. No. 208243, June 5, 2017) p. 106

Grave abuse of discretion — For this Petition to prosper, petitioner would have to show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law; here, the Ombudsman properly performed its duty to determine probable cause as to whether petitioner and his co-respondents *a quo* violated Sec. 3(e) of R.A. No. 3019. (Reyes *vs.* Office of the Ombudsman, G.R. No. 208243, June 5, 2017) p. 106

PRESCRIPTION OF ACTIONS

Nullity of a void title — Settled is the rule that an action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral attack. (Mendiola *vs.* Sangalang, G.R. No. 205283, June 7, 2017) p. 734

PRESUMPTIONS

Presumption of regular performance of official duties — In cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. (People *vs.* Pardillo, G.R. No. 219590, June 7, 2017) p. 911

— The direct account of law enforcement officers enjoy the presumption of regularity in the performance of their duties; unless the presumption is rebutted, it becomes conclusive. (People *vs.* Cabiles *y* Suarez *a.k.a.* "Kano", G.R. No. 220758, June 7, 2017) p. 969

PRE-TRIAL

Guidelines under A.M. No. 03-1-09-SC — The rule is that no evidence shall be allowed during trial if it was not identified and pre-marked during trial; exception. (Cruz *vs.* People, G.R. No. 210266, June 7, 2017) p. 801

PROBATION LAW OF 1976 (P.D. NO. 968)

Confidentiality of records — Cannot be invoked to justify the non-disclosure of the probationer in his Personal Data Sheet (PDS) of the fact that he had been formally charged and convicted of an offense, for the accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government; the PDS is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility. (*RE*: Anonymous Letter Complaint *vs.* Judge Divina T. Samson, Municipal Circuit Trial Court, Mabini-Pantukan, Compostela Valley, et al., A.M. No. MTJ-16-1870 [Formerly OCA I.P.I. No. 16-2833-MTJ], June 6, 2017) p. 384

— Under Sec. 17 of the Probation Law, the confidentiality of records of a probationer refers to the investigation report and supervision history of a probationer taken under the said law, which records shall not be disclosed to anyone other than the Probation Administration or the court concerned; however, the Probation Administration and the court concerned have the discretion to allow disclosure of the confidential records to specific persons and the government office/agency stated in the Probation Law. (*Id.*)

Probation — The grant of probation suspends the imposition of the principal penalty of imprisonment as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage; application. (*RE*: Anonymous Letter Complaint

vs. Judge Divina T. Samson, Municipal Circuit Trial Court, Mabini-Pantukan, Compostela Valley, et al., A.M. No. MTJ-16-1870 [Formerly OCA I.P.I. No. 16-2833-MTJ], June 6, 2017) p. 384

PUBLIC LAND ACT (C.A. NO. 141)

Easement of right of way — Two elements must concur before the property owner will be entitled to just compensation for the remaining property under Sec. 112 of C.A. No. 141: (1) that the remainder is not subject to the statutory lien of right of way; and (2) that the enforcement of the right of way results in the practical destruction or material impairment of the value of the remaining property, or in the property owner being dispossessed or otherwise deprived of the normal use of the said remainder. (Bartolata *vs.* Rep. of the Phils., G.R. No. 223334, June 7, 2017) p. 978

— The Order of Award from the Bureau of Lands granting title to petitioner over the subject property contained the following encumbrance: 2. The land shall be subject to the easement and servitudes provided for in Sec. 109-114 of C.A. No. 141, as amended; pursuant to Sec. 112 of C.A. No. 141, the government is entitled to an easement of right of way not exceeding 60 meters in width, without need of payment for just compensation, save for the value of improvements existing. (*Id.*)

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Acquisition of assets clearly disproportionate to one's income with malicious intent to conceal the truth by placing them in the names of the children constitutes dishonesty; dishonesty implies a disposition to lie, cheat, deceive, or defraud. (De Castro *vs.* Field Investigation Office, Office of the Ombudsman, G.R. No. 192723, June 5, 2017) p. 31

— CSC Resolution No. 06-0538 provides the rules on classifying the offense of dishonesty and the proper penalty to be imposed based on the factual circumstances of the

case. (*RE*: Anonymous Letter Complaint *vs.* Judge Divina T. Samson, Municipal Circuit Trial Court, Mabini-Pantukan, Compostela Valley, et al., A.M. No. MTJ-16-1870 [Formerly OCA I.P.I. No. 16-2833-MTJ], June 6, 2017) p. 384

— Dishonesty is a grave offense punishable by dismissal on the first instance, which penalty inherently carries with it cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service. (*Id.*)

— Dishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intention to violate the truth; a falsification in the personal data sheet is a dishonest act related to employment. (*Id.*)

Grave misconduct — Grave misconduct is classified as a grave offense punishable by dismissal from service for the first offense; corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: *(a)* cancellation of civil service eligibility; *(b)* forfeiture of retirement and other benefits, except accrued leave credits, if any; and *(c)* perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution"; penalty. (Judaya *vs.* Balbona, A.M. No. P-06-2279 (Formerly OCA IPI No. 06-2452-P), June 6, 2017) p. 375

— In a catena of cases, the Court has consistently held that the acts of soliciting and receiving money from litigants for personal gain constitute grave misconduct, for which the court employee guilty thereof should be held administratively liable, as in this case. (*Id.*)

— In order to differentiate grave misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former. (*Id.*)

— The resignation of a government employee charged with an offense punishable by dismissal from service does not render moot the administrative case against him, especially so that he is being charged with an offense punishable by dismissal from service. (*Id.*)

Misconduct — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; it must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. (Judaya *vs.* Balbona, A.M. No. P-06-2279 [Formerly OCA IPI No. 06-2452-P], June 6, 2017) p. 375

QUALIFIED RAPE

Civil liability — Award of civil liability, moral damages, and exemplary damages, modified; discussed. (People *vs.* Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

Commission of — The crime of qualified rape under Art. 266-B(1) of the Revised Penal Code consists of the twin circumstances of the victim's minority and her relationship to the perpetrator, both of which must concur and must be alleged in the information; it is immaterial whether the relationship was proven during trial if that was not specifically pleaded for in the information; rationale. (People *vs.* Armodia, G.R. No. 210654, June 7, 2017) p. 822

— To raise the crime of rape to qualified rape under Art. 266-B, par. 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur; in the present case, the elements of qualified rape were sufficiently alleged in the Information. (People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

Elements — In the present case, the elements of qualified rape are sufficiently alleged in the four Informations and also sufficiently proved by the prosecution. (People *vs*. Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

Penalty — Penalty imposed by the RTC as affirmed by the CA, sustained. (People *vs.* Agudo *y* Del Valle, G.R. No. 219615, June 7, 2017) p. 918

— Since the elements of minority of the victim and the relationship of the accused-appellant with the victim were alleged in the four Informations and the same were sufficiently proven by the prosecution during the trial, accused-appellant is guilty of four counts of qualified rape; penalty, discussed. (People *vs*. Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

Penalty and civil liability — Discussed. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

Penalty and damages — Discussed. (People *vs.* Alberca, G.R. No. 217459, June 7, 2017) p. 896

(People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

Qualifying circumstances — Qualifying circumstances of relationship and minority cannot be appreciated when not specifically alleged in the information although proven during trial; the circumstances of relationship and minority must be both alleged in the Informations and proved during trial, to be convicted of the crime of qualified rape. (People *vs.* Amoc *y* Mambatalan, G.R. No. 216937, June 5, 2017) p. 253

QUITCLAIMS

Requisites — Not all quitclaims are invalid and against public policy; cases abound where the Court gave effect to quitclaims executed by the employees when the employer is able to prove the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no

fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or goods customs, or prejudicial to a third person with a right recognized by law. (Doble, Jr. vs. ABB, Inc./Nitin Desai, G.R. No. 215627, June 5, 2017) p. 210

— Regardless of the fact that it was improperly notarized, the said quitclaim is a valid and binding contract, since the authenticity and due execution thereof is undisputed; such lack of proper notarization does not render a private document void or without legal effect, but merely exposed the notary public to prosecution for possible violation of notarial laws, as well as the one who caused the same for falsification of a public document. (*Id.*)

— While "dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it, the same is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it; application. (*Id.*)

RAPE

Commission of — As already settled in jurisprudence, not all victims react the same way; the mere fact that accused-appellant has moral ascendancy over the victim, being the latter's surrogate father, coupled with her tender age and accused-appellant's threat against her, would suffice to justify her fear in abiding by accused-appellant's orders, failure to resist, and also option to keep the harrowing experience to herself. (People *vs.* Alberca, G.R. No. 217459, June 7, 2017) p. 896

— Close proximity of other relatives at the scene of the rape does not negate the commission of the crime; rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the

family are also sleeping; lust is no respecter of time and place; neither is it deterred by age nor relationship. (People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

— Complainant's failure to shout or to tenaciously resist accused-appellant should not be taken against her since such negative assertion would not *ipso facto* make voluntary her submission to accused-appellant's criminal act; in rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. (People *vs.* Bisora *y* Lagonoy, G.R. No. 218942, June 5, 2017) p. 339

— Failure to establish the exact date when rape was committed does not result in the acquittal of the accused; the Court has repeatedly held that the exact date when the victim was sexually abused is not an essential element of the crime of rape. (People *vs.* Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

— Failure to shout for help or lack of resistance does not negate rape; where the accused was the common-law spouse of the victim's mother, moral ascendancy is substituted for force and intimidation. (People *vs.* Amoc *y* Mambatalan, G.R. No. 216937, June 5, 2017) p. 253

— Force and intimidation to facilitate the commission of rape, established. (*Id.*)

— It has been repeatedly held that, delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim; delay brought by fear for one's life cannot be deemed unreasonable. (*Id.*)

— Rapists are not deterred from committing the odious act of sexual abuse by the mere presence of people nearby or even family members; rape is committed not exclusively in seclusion; several cases instruct us that lust is no respecter of time or place and rape defies constraint of time and space. (People *vs.* Agudo *y* Del Valle, G.R. No. 219615, June 7, 2017) p. 918

— That accused and complainant were sweethearts does not necessarily negate the latter's lack of consent to the sexual act; as has been consistently ruled, "a love affair does not justify rape, for the beloved cannot be sexually violated against her will; love is not a license for lust." (*Id.*)

— The CA aptly stressed that rapists are not deterred by the presence of people nearby, such as members of their own family, inside the same room, considering that lust respects no time, place or circumstance; neither the smallness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held efficient to deter the commission of rape. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

— The Court has affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to stay intact despite repeated sexual intercourse; Likewise, the absence of hymenal fluid or spermatozoa is not a negation of rape. (*Id.*)

— The date and time of the commission of the crime of rape becomes important only when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction; the date of the commission of the rape is not an essential element of the crime. (People *vs.* Bentayo, G.R. No. 216938, June 5, 2017) p. 263

— The essence of rape is the carnal knowledge of a woman against her consent; a freshly broken hymen is not one of its essential elements; penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. (*Id.*)

— The prosecution has proven beyond reasonable doubt that accused-appellant had carnal knowledge of the victim against her will, through force, threat, or intimidation; she categorically and positively identified accused-

appellant as the perpetrator of the crime. (People *vs.* Armodia, G.R. No. 210654, June 7, 2017) p. 822

Elements — Act accomplished through force, threat or intimidation; when present. (People *vs.* Agudo *y* Del Valle, G.R. No. 219615, June 7, 2017) p. 918

— Enumerated; when present. (People *vs.* Amoc *y* Mambatalan, G.R. No. 216937, June 5, 2017) p. 253

— For conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented. (People *vs.* Bisora *y* Lagonoy, G.R. No. 218942, June 5, 2017) p. 339

— For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. (People *vs.* Baay *y* Falco, G.R. No. 220143, June 7, 2017) p. 943

— For the prosecution of the crime of rape under Art. 266-A (1)(a) of the Revised Penal Code, the following elements must be proved: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat, or intimidation. (*Id.*)

— The elements of rape under Art. 266-a 1(a) of the RPC are: 1) that the offender had carnal knowledge of a woman; and 2) that such act was accomplished through force, threat or intimidation; but when the offender is the victim's father, there need not be actual force, threat or intimidation because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. (People *vs.* Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

— Under par. 1 (a) of Art. 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation; when the offender is the victim's father, there need not be actual force, threat or intimidation because his moral ascendancy or influence over the victim substitutes for violence and intimidation. (People *vs.* Bentayo, G.R. No. 216938, June 5, 2017) p. 263

Penalty — As to the penalty, Art. 266-B of the RPC, as amended by R.A. No. 8353, prescribes *reclusion perpetua* as the penalty for the crime of simple rape; amount of civil indemnity, moral damages, and exemplary damages, increased pursuant to prevailing jurisprudence. (People *vs.* Bisora *y* Lagonoy, G.R. No. 218942, June 5, 2017) p. 339

Penalty and civil liability — The CA properly imposed the penalty of *reclusion perpetua* in conformity with Art. 266-B of the RPC; to conform to prevailing jurisprudence, amount of damages awarded, modified; exemplary damages in rape cases, awarded for the inherent bestiality of the act committed, even if no aggravating circumstance attended the commission of the crime. (People *vs.* Amoc *y* Mambatalan, G.R. No. 216937, June 5, 2017) p. 253

Penalty and damages — Rape of a mental retardate falls under par. 1(b), not Sec. 1(d) [of Statutory Rape], of Art. 266-A of the Revised Penal Code; accused-appellant should be held liable for simple rape; while it was proven and admitted during trial that accused-appellant knew of victim's mental retardation, the same was not alleged in the Information, hence, cannot be appreciated as a qualifying circumstance; increase of the award of exemplary damages in accordance with the prevailing jurisprudence on the matter. (People *vs.* Baay *y* Falco, G.R. No. 220143, June 7, 2017) p. 943

— The penalty of *reclusion perpetua* was properly imposed pursuant to Art. 266(B) of the Revised Penal Code; award

of damages increased to accord with jurisprudence. (People *vs.* Domingo *y* Labis, G.R. No. 225743, June 7, 2017) p. 1040

Proper penalty and civil liability — Discussed. (People *vs.* Bentayo, G.R. No. 216938, June 5, 2017) p. 263

Sweetheart defense — Sweetheart defense of the appellant, rejected; such defense, being uncorroborated and self-serving, deserved scant consideration; that the appellant and the victim had been sweethearts was no excuse in the eyes of the law for him to employ force and intimidation in gratifying his carnal desires. (People *vs.* Domingo *y* Labis, G.R. No. 225743, June 7, 2017) p. 1040

REAL ESTATE MORTGAGE LAW (ACT NO. 3135)

Foreclosure proceedings — While as a rule, personal notice to the mortgagor is not required, such notice may be subject of a contractual stipulation, the breach of which is sufficient to nullify the foreclosure sale; personal notice is necessary if the parties so agreed in their mortgage contract. (Paradigm Development Corp. of the Phils. *vs.* Bank of the Philippine Islands, G.R. No. 191174, June 7, 2017) p. 539

RES JUDICATA

Action for reconveyance — *Res judicata* could not be a defense in an action for reconveyance based on fraud where the complainant had no knowledge of the application for registration; rationale for allowing reconveyance despite the finality of the registration. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

Concepts — *R*es judicata embraces two (2) concepts: (i) bar by prior judgment; and (ii) conclusiveness of judgment, respectively covered under Rule 39, Sec. 47 of the Rules of Court, par. (b) and (c); *res judicata* in the concept of bar by prior judgment proscribes the filing of another action based on "the same claim, demand, or cause of action"; *res judicata* in the concept of conclusiveness of judgment applies when there is an identity of issues in

two (2) cases between the same parties involving different causes of action; effect. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

Doctrine of — According to the doctrine of *res judicata*, "a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit." (Emerald Garment Mfg. Corp. *vs.* H.D. Lee Co., INC., G.R. No. 210693, June 7, 2017) p. 835

Elements — The elements for *res judicata* to apply are as follows: (a) the former judgment was final; (b) the court that rendered it had jurisdiction over the subject matter and the parties; (c) the judgment was based on the merits; and (d) between the first and the second actions, there was an identity of parties, subject matters, and causes of action. (Emerald Garment Mfg. Corp. *vs.* H.D. Lee Co., INC., G.R. No. 210693, June 7, 2017) p. 835

RETIREMENT

Retirement fund — It is clear from the provisions of the Plan that it is the company that contributes to a "retirement fund" for the account of the pilots; these contributions comprise the benefits received by the latter upon retirement, separation from service, or disability; nature of the Plan, explained. (Philippine Airlines, Inc. *vs.* Hassaram, G.R. No. 217730, June 5, 2017) p. 296

— Respondent's retirement pay should be computed on the basis of petitioner's retirement plans and not on Art. 287 of the Labor Code. (*Id.*)

ROBBERY

Elements — The elements of simple robbery are: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things; taking,

when considered complete. (People *vs.* Avancena *y* Cabanela, G.R. No. 200512, June 7, 2017) p. 672

SALES

Innocent purchaser for value — An innocent purchaser for value refers to the buyer of the property who pays for its full and fair price without or before notice of another person's right or interest in it; however, if a property is registered, the buyer of a parcel of land is not obliged to look beyond the transfer certificate of title to be considered a purchaser in good faith for value; exception; application. (Sps. Aboitiz *vs.* Sps. Po, G.R. No. 208450, June 5, 2017) p. 123

SEAFARERS

Employment of — The employment of seafarers and its incidents are governed by the contracts they sign every time they are hired or re-hired; these contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy. (Madridejos *vs.* NYK-FIL Ship Mgmt., Inc., G.R. No. 204262, June 7, 2017) p. 704

Pre-employment Medical Examination — A seafarer only needs to pass the mandatory Pre-Employment Medical Examination in order to be deployed on duty at sea; this examination cannot be relied upon to reflect a "seafarer's true state of health" since it is not exploratory and may just disclose enough for employers to decide whether a "seafarer is fit for overseas employment." (Madridejos *vs.* NYK-FIL Ship Mgmt., Inc., G.R. No. 204262, June 7, 2017) p. 704

SEARCHES AND SEIZURES

Consented warrantless search — Consent to a warrantless search and seizure must be "unequivocal, specific, intelligently given and unattended by duress or coercion"; its validity is determined by the totality of the circumstances; mere passive conformity or silence to

the warrantless search is only an implied acquiescence, which amounts to no consent at all. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

Reasonable search — What constitutes a reasonable search is purely a judicial question, the resolution of which depends upon the unique and distinct factual circumstances; this may involve an inquiry into "the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured." (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

Search incidental to a lawful arrest — A search incidental to a lawful arrest requires that there must first be a lawful arrest before a search is made; for there to be a lawful arrest, law enforcers must be armed with a valid warrant. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

Search of a moving vehicle — The rules governing searches and seizures have been liberalized when the object of a search is a vehicle for practical purposes; explained; checkpoint search, when allowed; the extent of routine inspections must be limited to a visual search; extensive searches, when permissible. (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

Stop and frisk search — The warrantless search cannot be justified under the reasonable suspicion requirement in "stop and frisk" searches; defined in *People vs. Chua* as "the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband"; the allowable scope of a "stop and frisk" search is limited to a "protective search of outer clothing for weapons." (Veridiano *y* Sapi *vs.* People, G.R. No. 200370, June 7, 2017) p. 642

Warrantless searches and seizures — No arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority; any evidence obtained in

violation of this provision is inadmissible for any purpose in any proceeding; exception in Sec. 5(a), two elements must be present. (People *vs.* Pardillo, G.R. No. 219590, June 7, 2017) p. 911

SHERIFFS

Functions — Respondent sheriff is liable for dereliction of his duty on account of his failure and refusal to enforce the writ of execution and the writ of demolition. (Olympia-Geronilla *vs.* Montemayor, Jr.*,* A.M. No. P-17-3676, [Formerly OCA IPI No. 12-3985-P], June 5, 2017) p. 1

Grave misconduct and dishonesty — Receiving money from a party without the approval of the court is tantamount to unlawful exaction for which he must be held liable for grave misconduct and dishonesty. (Olympia-Geronilla *vs.* Montemayor, Jr.*,* A.M. No. P-17-3676, (Formerly OCA IPI No. 12-3985-P), June 5, 2017) p. 1

Grave misconduct, dishonesty and conduct prejudicial to the best interest of the service — Grave misconduct, dishonesty and conduct prejudicial to the best interest of the service are grave offenses; proper penalty; in view of respondent's previous dismissal, the Court imposed the penalty of fine. (Olympia-Geronilla *vs.* Montemayor, Jr.*,* A.M. No. P-17-3676, (Formerly OCA IPI No. 12-3985-P), June 5, 2017) p. 1

SIMPLE RAPE

Penalty and damages — Simple rape is punishable by *reclusion perpetua,* even if the aggravating circumstances of minority and relationship were present; Art. 63 of the Revised Penal Code provides that "in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed." (People *vs.* Armodia, G.R. No. 210654, June 7, 2017) p. 822

STATUTORY RAPE

Commission of — Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act; to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant. (People *vs.* Gaa *y* Rodriguez, G.R. No. 212934, June 7, 2017) p. 860

Elements — Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape; to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant. (People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

(People *vs.* Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

— Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented; proof of force, intimidation and consent is unnecessary, since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place; proven beyond reasonable doubt in this case. (People *vs.* Aycardo, G.R. No. 218114, June 5, 2017) p. 309

SUPREME COURT

Jurisdiction — Generally, the Court will dismiss petitions that are directly filed before it if relief can be obtained

from the lower courts; immediate resort to this Court may be warranted: "(1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy." (Chiquita Brands, Inc. *vs.* Hon. Omelio, G.R. No. 189102, June 7, 2017) p. 497

TAXES

Capital gains tax — It is settled that the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Secs. 24(D) and 56(A)(3) of the National Internal Revenue Code, and profit from the transaction constitutes capital gain; since capital gains tax is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax. (Rep. of the Phils. *vs.* Sps. Salvador, G.R. No. 205428, June 7, 2017) p. 742

TAX REFUND

Entitlement to — Petitioner correctly filed its claim for tax refund to recover the erroneously paid taxes from the Bureau of Internal Revenue; given that this is a case of tax assumption and not an exemption, the BIR is, therefore, not without recourse; it can properly collect the subject taxes from the NPC as the proper party that assumed petitioner's tax liability. (Mitsubishi Corporation-Manila Branch *vs.* Commissioner Of Internal Revenue, G.R. No. 175772, June 5, 2017) p. 16

— Petitioner is entitled to the refund of erroneously paid income tax and branch profit remittance tax; the Philippine Government's assumption of "all fiscal levies and taxes," which includes the subject taxes, is clearly a form of concession given to Japanese suppliers, contractors or consultants in consideration of the OECF Loan, which proceeds were used for the implementation of the Project; in line with the tax assumption provision under the Exchange of Notes, Art. VIII (B) (1) of the Contract states that National Power Corporation shall pay any and all forms of taxes that are directly imposable under the Contract. (*Id.*)

Prescriptive period for filing judicial claim — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof; according to the Court in *Mindanao II,* it is Sec. 112 (C) of the 1997 Tax Code that applies to the judicial claim for refund, and, citing *San Roque,* compliance with the 120+30 day periods is mandatory and jurisdictional. (Marubeni Philippines Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 198485, June 5, 2017) p. 75

— The failure to observe the 120 days prior to filing of a judicial claim for refund is not a mere non-exhaustion of administrative remedies but is jurisdictional in nature; accordingly, the CIR's failure to raise the issue of compliance with the 120+30 day periods in its Answer to Marubeni's petition for review cannot be deemed a waiver of such objection; application. (*Id.*)

TREACHERY OR *ALEVOSIA*

As an aggravating circumstance — Treachery or *alevosia*, is present when the offender adopts means, methods, or forms in the execution of the felony that ensure its commission without risk to himself arising from the defense which the offended party might make; *alevosia* is characterized by a deliberate, sudden and unexpected

assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and without risk to the assailant. (People *vs.* Raytos *y* Espino, G.R. No. 225623, June 7, 2017) p. 1007

WITNESSES

Credibility of — As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. (People *vs.* Amoc *y* Mambatalan, G.R. No. 216937, June 5, 2017) p. 253

— As to appellant's contention that the testimony of victim is full of inconsistencies and, hence, should not be given credence, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or do not detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole. (People *vs.* Bentayo, G.R. No. 216938, June 5, 2017) p. 263

— Delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the complainant; only when the delay is unreasonable or unexplained may it work to discredit the complainant. (People *vs.* Bisora *y* Lagonoy, G.R. No. 218942, June 5, 2017) p. 339

— Findings of the trial court concurred with by the Court of Appeals, respected; the rule is even more strictly applied if the appellate court has concurred with the trial court as in this case. (People *vs.* Alberca, G.R. No. 217459, June 7, 2017) p. 896

— In rape cases, the credibility of the victim is almost always the single most important issue; if the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with

human nature and the normal course of things, the accused may be convicted solely on that basis; rationale; the rule finds an even more stringent application where the said findings are sustained by the CA. (People *vs.* Descartin, Jr. *y* Mercader, G.R. No. 215195, June 7, 2017) p. 881

— Medical findings have never been considered indispensable in supporting convictions for rape; the rape victim's testimony, standing alone, can be made the basis of the successful prosecution of the culprit provided such testimony meets the test of credibility. (People *vs.* Domingo *y* Labis, G.R. No. 225743, June 7, 2017) p. 1040

— The evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. (Heirs of Villanueva *vs.* Heirs of Mendoza, G.R. No. 209132, June 5, 2017) p. 172

— The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record; when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court. (People *vs.* Matheus *y* Delos Reyes, G.R. No. 198795, June 7, 2017) p. 626

— The testimonies of child rape victims are generally entitled to full faith and credence as against denials and alibis, defenses which jurisprudence has long considered as weak and unreliable. (People *vs.* Armodia, G.R. No. 210654, June 7, 2017) p. 822

— 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, especially after the Court of Appeals as the intermediate reviewing tribunal has affirmed the findings; exception. (*Id.*)

— When it comes to the issue of credibility of witnesses, findings of the trial courts carry great weight and respect especially when affirmed by the Court of Appeals. (People *vs*. Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

Testimonies of child rape-victims — Testimonies of child victims are given full weight and credit, for 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. (People *vs.* Alberca, G.R. No. 217459, June 7, 2017) p. 896

Testimony of — Accused's contention that the victim merely fabricated the charge of rape and the latter's ill motives, rejected; it has been held that it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her father. (People *vs*. Pacayra *y* Mabutol, G.R. No. 216987, June 5, 2017) p. 275

— Testimony of the mentally-retarded rape victim, upheld; at any rate, the trial court correctly pointed out that what is significant, notwithstanding discrepancies in the victim's testimony, was the positive identification of the accused-appellant as the person who raped or had sex with her. (People *vs*. Baay *y* Falco, G.R. No. 220143, June 7, 2017) p. 943

— The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case; rationale. (People *vs.* Gaa *y* Rodriguez, G.R. No. 212934, June 7, 2017) p. 860

Testimony of minor rape victim — 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. (People *vs.* Agudo *y* Del Valle, G.R. No. 219615, June 7, 2017) p. 918

CITATION

Page

I. LOCAL CASES

Aala, et al. *vs*. Uy, et al. G.R. No. 202781,
Jan. 10, 2017 527
Abad vs. Sps. Guimba, 503 Phil. 321 (2005) 757-758, 763
Abaya *vs*. Ebdane, Jr., 544 Phil. 645, 684 (2007) 25, 102
Abes *vs*. Rodil, 124 Phil. 243, 248 (1966) 158
Abulencia *vs*. Hermosisima,
712 Phil. 248, 252 (2013) 47
Acebedo Optical Company, Inc. *vs*.
Court of Appeals, 385 Phil. 956, 968 (2000) 583
Acting Registrars of Land Titles and Deeds
of Pasay City, Pasig and Makati *vs*.
Regional Trial Court of Makati, Branch 57,
263 Phil. 568 (1990) 165
Adoma *vs*. Gatcheco, 489 Phil. 273 (2005) 13
Adormeo *vs*. Commission on Elections,
426 Phil. 472, 476 (2002) 485
Advincula *vs*. Dicen, 497 Phil. 979, 990 (2005) 393, 397
Afable, et al. *vs*. Singer Sewing Machine,
Co., 58 Phil. 39, 42 (1933) 964
Agbulos *vs*. Alberto, 115 Phil. 777, 780 (1962) 67
Agdeppa *vs*. Ombudsman, G.R. No. 146376,
April 23, 2014, 723 SCRA 293, 330 .... 413, 417
Aguilar *vs*. Department of Justice,
G.R. No. 197522, Sept. 11, 2013,
705 SCRA 629, 638 .... 415, 420
Ajax Marketing and Development Corporation
vs. CA, 318 Phil. 268 (1995) 555
Alberto *vs*. Court of Appeals, G.R. No. 182130,
June 19, 2013, 699 SCRA 104, 130 415
Aldovino, Jr. *vs*. Commission on Elections,
623 Phil. 876 (2009) 484
Alfornon *vs*. Delos Santos, G.R. No. 203657,
July 11, 2016 395-396
Amante-Descallar *vs*. Judge Ramas,
601 Phil. 21, 37 (2009) 368
Ambray and Ambray, Jr. *vs*. Tsourous, et al.,
G.R. No. 209264, July 5, 2016 45

Page

Amedo *vs*. Olabarrieta, 95 Phil. 33, 36 (1954) 964
Amerol *vs*. Bagumbaran, 238 Phil. 397, 409 (1987) 142
AMKOR Technology Philippines, Inc. *vs*. Juangco,
541 Phil. 312, 316 (2007) 237
Andaya *vs*. People, 526 Phil. 480, 496 (2006) 833
Angeles *vs*. Secretary of Justice,
503 Phil. 93, 100 (2005) 115
Anico *vs*. Pilipiña, 670 Phil. 460, 470 (2011) 12
Ansaldo *vs*. Tantuico, Jr., G.R. No. 50147,
Aug. 3, 1990, 188 SCRA 300, 304 994
Antiquera *y* Codes *vs*. People,
723 Phil. 425, 432 (2013) 654
Applied Food Ingredients Company, Inc. *vs*.
Commissioner of Internal Revenue,
720 Phil. 782 (2013) 87
Aratea *vs*. Commission on Elections,
696 Phil. 700, 731-732 (2012) 481
Arcana *vs*. Court of Appeals, 442 Phil. 7, 13 (2002) 1016
Arguelles, et al. *vs*. Malarayat Rural Bank, Inc.,
730 Phil. 226, 234 (2014) 756-758, 763-764
Arnado *vs*. COMELEC, G.R. No. 210164,
Aug. 18, 2015, 767 SCRA 168, 195 477
Asiatrust Development Bank *vs*. Tuble,
691 Phil. 732, 746 (2012) 559
ATCI Overseas Corporation *vs*. Echin,
647 Phil. 43, 50 (2010) 536
Atlas Consolidated Mining and Development
Corporation *vs*. Commissioner of Internal
Revenue, 551 Phil. 519 (2007) 79
Aujero *vs*. Philippine Communications Satellite
Communication, 679 Phil. 463, 479 (2012) 237
Aznar *vs*. Commission on Elections,
264 Phil. 307, 318 (1990) 482
B.H. Berkenkotter & Co. *vs*. Court of Appeals,
290-A Phil. 371, 374 (1992) 747
Bacbac-Del Isen *vs*. Molina, A.M. No. P-15-3322,
June 23, 2015, 760 SCRA 289, 295-299 382
Baguio Central University *vs*. Gallente,
722 Phil. 494, 505 (2013) 620-621

Page

Bank of Commerce *vs*. Spouses San Pablo, Jr.,
550 Phil. 805, 821 (2007) 757, 764
Bank of the Philippine Islands *vs*. Domingo,
G.R. No. 169407, March 25, 2015,
754 SCRA 245, 263 554
Bank of the Philippine Islands *vs*. Green,
48 Phil. 284, 287 (1925) 530-531
Batangas CATV, Inc. *vs*. Court of Appeals,
482 Phil. 544, 571 (2004) 569, 584
Beltran *vs.* Monteroso, 593 Phil. 413 (2008)........................ 13-14
Bengco, et al. *vs*. Bernardo, 687 Phil. 7 (2012)....................... 364
Boston Equity Resources, Inc. *vs*. CA,
711 Phil. 451 (2013) 353
BPI Family Savings Bank, Inc. *vs.*
Spouses Veloso, 479 Phil. 627, 635 (2004) 68
Brown Madonna Press, Inc. *vs*. Casas,
G.R. No. 200898, June 15, 2015,
757 SCRA 525, 537 600
Bruselas, Jr. *vs.* Mallari, A.C. No. 9683,
IPI No. 17-250-CA-J, IPI No. 17-251-CA-J,
et al., Feb. 21, 2017 374
Buhain *vs*. Court of Appeals,
433 Phil. 94, 102 (2002) 626
Buisan, et al. *vs*. Commission on Audit, et al.,
G.R. No. 212376, Jan. 31, 2017 465
Bulos, Jr. *vs.* Yasuma, 554 Phil. 591, 601 (2007) 55, 583
Bustillo, et al. *vs*. People, G.R. No. 160718,
May 12, 2010 976
C.F. Sharp Crew Management, Inc., et al. *vs*.
Legal Heirs of the late Godofredo Repiso,
G.R. No. 190534, Feb. 10, 2016 962
Caballes *vs*. Court of Appeals,
424 Phil. 263, 278, 285-286 (2002) 665
Cabanos *vs*. Register of Deeds, 40 Phil. 620 (1919) 154
Cabrera *vs.* Commission on Elections,
588 Phil. 969, 974 (2008) 477
Cagayan Electric Power and Light Co., Inc. *vs*.
City of Cagayan de Oro, 698 Phil. 788, 811 (2012)........... 453

Page

Calalang *vs*. Register of Deeds of Quezon City,
301 Phil. 91 (1994) ... 153
Caluag *vs*. People, 599 Phil. 717, 724–725 (2009) ... 818
Caoile *vs*. National Labor Relations Commission,
359 Phil. 399, 406 (1998) ... 606, 621
Carabeo *vs*. Sandiganbayan, 659 Phil. 40, 46 (2011) ... 47
Carandang *vs*. Santiago, 97 Phil. 94 (1955) ... 422
Career Philippines Shipmanagement, Inc. *vs*.
Serna, 700 Phil. 1, 9 (2012) ... 723
Caro *vs*. Court of Appeals, 259 Phil. 891, 898 (1989) ... 142
Casal *vs*. COA, 538 Phil. 634 (2006) ... 467
Casimiro *vs*. Rigor, G.R. No. 206661,
Dec. 10, 2014, 744 SCRA 611 ... 56
Casing *vs*. Ombudsman, G.R. No. 192334,
June 13, 2012, 672 SCRA 500, 507 ... 413
Cathay Metal Corp. *vs*. Laguna West
Multi-Purpose Cooperative, Inc.,
738 Phil. 37, 63 (2014) ... 528
Cavite Development Bank *vs*. Spouses Lim,
381 Phil. 355 (2000) ... 170, 756-757
CBK Power Company Limited *vs*. CIR,
G.R. Nos. 193383-94 and 193407-08,
Jan. 14, 2015, 746 SCRA 93, 108 ... 24
Century Iron Works, Inc., et al. *vs*.
Bañas, 711 Phil. 576, 586 (2013) ... 178
Chan y Lim *vs*. Secretary of Justice,
572 Phil. 118, 132 (2008) ... 116
China Banking Corp. *vs*. Lagon,
527 Phil. 143, 152 (2006) ... 760, 763
Civil Liberties Union *vs*. Executive Secretary,
272 Phil. 147 (1991) ... 465, 468
Claudio *vs*. Spouses Saraza,
G.R. No. 213286, Aug. 26, 2015,
768 SCRA 356, 364-365 ... 170, 756-757, 764
Clemente *vs*. Court of Appeals, G.R. No. 82407,
March 27, 1995 ... 858
CMS Stock Brokerage, Inc. *vs*. Court of Appeals,
341 Phil. 787, 800 (1997) ... 68, 74

Page

Co *vs*. Intermediate Appellate Court,
245 Phil. 347 (1988) 165
Coca-Cola Bottlers Phils., Inc. *vs*. Cabalo,
516 Phil. 327 (2006) 225-226
Commission on Audit *vs*. Link Worth International,
Inc., 600 Phil. 547, 555-556, 559 (2009) 103
Commissioner of Internal Revenue *vs*.
Aichi Forging Company of Asia, Inc.,
646 Phil. 710 (2010) 80
Mirant Pagbilao Corporation, 586 Phil. 712 (2008) 79
Petron Corporation, 685 Phil. 118, 147 (2012) 446
San Roque Power Corp., 703 Phil. 310 (2013) 82
Concerned Employee *vs*. Roberto Valentin,
Clerk II, Records Division, Office of the
Court Administrator, 498 Phil. 347 (2005) 396
Concerned Employees of the Municipal Trial
Court of Meycauayan, Bulacan *vs*. Larizza
Paguio-Bacani, Branch Clerk of Court II,
Municipal Trial Court of Meycauayan,
Bulacan, 611 Phil. 630 (2009) 396
Concerned Taxpayer *vs*. Norberto Doblada, Jr.,
507 Phil. 222 (2005) 396
Consolidated Bank and Trust Corporation *vs*.
Intermediate Appellate Court, 3
234 Phil. 582, 590 (1987) 65, 72-74
Cortes *vs*. Intermediate Appellate Court,
256 Phil. 979 (1989) 563
Coscuella *vs*. Court of Appeals, G.R. No. 77765, ...
Aug. 15, 1988, 164 SCRA 393 988
Court Administrator *vs.* Sevillo,
A.M. No. P-95-1159, March 20, 1997,
270 SCRA 190 495
Crewlink, Inc. *vs.* Teringtering, et al.,
697 Phil. 302, 309 (2012) 961
Crisostomo *vs*. Garcia, Jr.,
516 Phil. 743, 751-752 (2006) 143-144, 147
Cruz *vs*. Court of Appeals, 346 Phil. 506 (1997) 169
Cruz-Villanueva *vs.* Atty. Rivera,
537 Phil. 409, 414-415 (2006) 367

Page

Cuison *vs*. Court of Appeals,
351 Phil. 1089, 1102 (1998) 477
Dagan *vs*. Office of the Ombudsman (Visayas),
G.R. No. 184083, Nov.19, 2013, 709 SCRA 681 410
Dayo *vs*. Status Maritime Corp.,
751 Phil. 778, 785, 789 (2015) 727, 729
De Guzman, Jr. *vs*. Mendoza,
493 Phil. 690 (2005) 13, 396
Dela Cruz *vs*. Malunao,
684 Phil. 493, 502-506 (2012) 382
Dela Cruz *vs*. People, G.R. No. 209387,
Jan. 11, 2016 670-671
Dela Cruz, et al. *vs*. COA, 422 Phil. 473 (2001) 465
Dela Llana *vs*. Commission on Elections,
462 Phil. 355 (2003) 480
Destreza *vs*. Riñoza-Plazo,
619 Phil. 775, 782-783 (2009) 163-164
Dichaves *vs*. Office of the Ombudsman,
G.R. Nos. 206310-11, Dec. 7, 2016 .... 114, 119
Dimakuta *vs.* People, G.R. No. 206513,
Oct. 20, 2015, 773 SCRA 228 324
Dimarucot *vs*. People, 645 Phil. 218, 227 (2010) 820
Diocese of Bacolod *vs*. Commission on Elections,
751 Phil. 301, 329 (2015) 527-528
Dizon *vs.* Lacap, 50 Phil. 193 (1927) 154
Duero *vs*. Court of Appeals, 424 Phil. 12, 20 (2002) 477
Dumaguete CLC Lending Corp. *vs*.
Tubilla, A.M. No. P-15-3343, Aug. 3, 2015 52
Duque *vs*. Domingo, 170 Phil. 676 (1977) 145
Dy *vs*. Yu, G.R. No. 202632, July 8, 2015,
762 SCRA 357, 373 152
Eduarte *vs*. People, 603 Phil. 504, 520 (2009) 692
Elegir *vs*. PAL, 691 Phil. 58 (2012) 303-304, 308
Elma *vs*. Jacobi, G.R. No. 155996, June 27, 2012,
675 SCRA 20, 56 .... 413, 420
Enojas *vs*. COMELEC, 347 Phil. 510 (1997) 480
Ereña *vs*. Querrer-Kauffman,
525 Phil. 381, 397 (2006) 756-757

Page

Ermita-Malate Hotel and Motel Operators
Association, Inc. *vs*. City Mayor of Manila,
127 Phil. 306 (1967) 589
Escobar *vs*. Locsin, 74 Phil. 86 (1943) 154
Esquillo *vs*. People, 643 Phil. 577 (2010) 663
Estrada *vs*. Office of the Ombudsman,
751 Phil. 821, 863 (2015) 115, 120
Exocet Security and Allied Services Corp. *vs*.
Serrano, G.R. No. 198538, Sept. 29, 2014,
737 SCRA 40, 52 598
Fabian *vs*. Desierto, G.R. No. 129742,
Sept. 16, 1998, 295 SCRA 470 410
Fangonil-Herrera *vs*. Fangonil,
558 Phil. 235, 255-257 (2007) 159
Far Eastern Realty Investment, Inc. *vs*.
Court of Industrial Relations,
243 Phil. 281, 284 (1988) 532
FEBTC *vs*. Chante, 719 Phil. 221, 234 (2013) 183-184, 186
Felicilda *vs*. Uy, G.R. No. 221241, Sept. 14, 2016 880
Ferrer *vs*. Bautista, 760 Phil. 652, 698 (2015) 451
Ferrer, Jr. *vs*. City Mayor of Quezon City, et al.,
G.R. No. 210551, June 30, 2015,
760 SCRA 652, 710 448
FGU Insurance Corp. *vs*. Regional
Trial Court of Makati City, Branch 66,
659 Phil. 117, 123 (2011) 530
Filoteo, Jr. *vs*. Sandiganbayan,
331 Phil. 531, 578 (1996) 654
Flordeliza *vs*. Ang, G.R. No. 178511, Dec. 4, 2008 857
Floria *vs*. Sunga, 420 Phil. 637 (2001) 396
Fortune Corporation *vs*. Court of Appeals,
G.R. No. 108119, Jan. 19, 1994,
229 SCRA 355, 371 815
Foz, Jr. *vs*. People, 618 Phil. 120 (2009) 199, 201
Francisco *vs*. Bahia Shipping Services, Inc.,
650 Phil. 200, 206-207 (2010) 732-733
Fuentes, et al. *vs*. Roca, et al.,
633 Phil. 9, 20 (2010) 765

Page

Gadrinab *vs*. Salamanca, 736 Phil. 279,
293, 295 (2014) 530, 533
Galang *vs*. Court of Appeals, et al.,
G.R. No. 76221, July 29, 1991 224
Galario *vs*. Office of the Ombudsman (Mindanao),
G.R. No. 166797, July 10, 2007, 527 SCRA 190 416
Galindez *vs*. Susbilla-De Vera,
726 Phil. 1, 6-9 (2014) 382
Gan *vs*. Galderma Philippines, Inc., et al.,
701 Phil. 612 (2013) 229, 231
Garcera II *vs*. Parrone, 502 Phil. 8, 12 (2005)........................... 12
Garces *vs*. People, G.R. No. 173858,
July 17, 2007, 527 SCRA 827 1048
General Milling Corporation *vs*. Viajar,
702 Phil. 532, 540 (2013) 961
Gepulle-Garbo *vs*. Spouses Garabato,
G.R. No. 200013, Jan. 14, 2015,
746 SCRA 189, 197 .... 178, 182
Geraldez *vs*. Court of Appeals, G.R. No. 108253,
Feb. 23, 1994, 230 SCRA 320 425
Gerdtman, represented by her sister and
Attorney-in-fact, Rosaline Lopez Bunquin *vs*.
Montemayor, Jr., A.M. No. P-13-3113,
formerly OCA-I.P.I. No. 12-3815-P, Aug. 2, 2016 10
Global Holiday Ownership Corporation *vs.*
Metropolitan Bank and Trust Company,
607 Phil. 850 (2009) 564
Gonzales *vs*. Cerenio, 564 Phil. 295, 302-303 (2007) 11
Goodrich Manufacturing Corp. *vs*. Ativo,
625 Phil. 102, 107 (2010) 236
Great Southern Maritime Services,
Corporation, et al. *vs.* Surigao, et al.,
616 Phil. 758, 767 (2009) 968
Greater Metropolitan Manila Solid Waste
Management Committee *vs.* Jancom
Environmental Corp., 526 Phil. 761,
778-779 (2006) 530, 533
Guerrero-Boylon *vs.* Boyles, 674 Phil. 565 (2011) 12

Page

Guevarra *vs*. People, 726 Phil. 183, 193 (2014) 1037
Guevarra, et al. *vs*. People, G.R. No. 170462,
Feb. 5, 2014 937
Gupilan-Aguilar *vs*. Office of the Ombudsman,
728 Phil. 210, 231 (2014) 48, 52, 55
Gurango *vs*. Best Chemicals and Plastics, Inc.,
643 Phil. 520, 531 (2010) 618
Gutierrez *vs*. Court of Tax Appeals,
101 Phil. 713, 721-722 (1957) 748
Heirs of Concha, Sr. *vs*. Spouses Lumocso,
564 Phil. 580, 595-597 (2007) 139
Heirs of Gregorio Lopez *vs*. Development
Bank of the Philippines, G.R. No. 193551,
Nov. 19, 2014, 741 SCRA 153, 170 757
Heirs of Saguitan *vs*. City of Mandaluyong,
G.R. No. 135087, March 14, 2000, 328 SCRA 137 988
Heirs of Spouses Liwagon *vs*. Heirs of Spouses
Liwagon, G.R. No. 193117, Nov. 26, 2014,
743 SCRA 16, 24 164
Heirs of Victorino Sarili *vs*. Lagrosa,
G.R. No. 193517, Jan. 15, 2014,
713 SCRA 726, 739-740 740
Hinatuan Mining Corp. *vs*. National Labor
Relations Commission, 335 Phil. 1090,
1093-1094 (1997) 626
Hiponia-Mayuga *vs*. Metropolitan Bank
and Trust Co., G.R. No. 211499, June 22, 2015 879
Holy Child Catholic School *vs*. Sto. Tomas,
714 Phil. 427 (2013) 701
Homar *vs*. People, G.R. No. 182534, Sept. 2, 2015 654
Hortizuela *vs*. Tagufa, 754 Phil. 499, 512 (2015) 156
Ignacio *vs*. Basilio, 418 Phil. 256, 265–266 (2001) 148
Ilagan *vs*. Enrile, 223 Phil. 561 (1985) 660
Iloilo Dock & Engineering Co. *vs*.
Workmen's Compensation Commission,
135 Phil. 95, 110-113 (1968) 964
Imasen *vs*. Alcon, 746 Phil. 172, 181 (2014) 618-619
In re Salibo *vs*. Warden,
757 Phil. 630, 656 (2015) 660-661

Page

In the Matter of: Anonymous Complaint for Dishonesty, Grave Misconduct and Perjury Committed by Judge Jaime E. Contreras (In His Capacity as then 4th Provincial Prosecutor of Libmanan, Camarines Sur), A.M. No. RTJ-16-2452, March 9, 2016 397
Information Technology Foundation of the Philippines (Infotech) *vs.* Commission on Elections (COMELEC), G.R. No. 159139, Jan.13, 2004, 419 SCRA 141 405
ING Bank N.V. *vs.* CIR, G.R. No. 167679, April 20, 2016, 790 SCRA 588, 598-599 29
Intestate Estate of Jose Uy, herein represented by its administrator Wilson Uy *vs.* Maghari III, A.C. No. 10525, Sept. 1, 2015 360
Inting *vs.* Tanodbayan, 186 Phil. 343, 348 (1980) 393
Javier *vs.* Philippine Transmarine Carriers, Inc., 738 Phil. 374, 384 (2014) 724
Jebsen Maritime, Inc. *vs.* Ravena, 743 Phil. 371, 388 (2014) 729
King of Kings Transport, Inc. *vs.* Mamac, 553 Phil. 108, 115-118 (2007) 623
Kuizon *vs.* Desierto, G.R. No. 140619, March 9, 2001, 354 SCRA 158 410
Lagado *vs.* Leonido, 741 Phil. 102, 107 (2014) 382
Lagahit *vs.* Pacific Concord Container Lines, G.R. No. 177680, Jan. 13, 2016 621
Lamis *vs.* Ong, 504 Phil. 84, 90 (2005) 818
Land Bank of the Philippines *vs.* Court of Appeals, 456 Phil. 755, 786 (2003) 477
Land Bank of the Philippines *vs.* Poblete, 704 Phil. 610, 622 (2013) 762-763
Landowners in the Philippines, Inc. *vs.* Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989, 175 SCRA 343 988
Latasa *vs.* Commission on Elections, 463 Phil. 296 (2003) 481

Page

Lawyers Against Monopoly and Poverty (LAMP)
vs. Secretary of Budget and Management,
686 Phil. 357, 372-373 (2012) 448
Lee *vs*. De Guzman, 265 Phil. 289 (1990) 532
Leong *vs.* See, G.R. No. 194077, Dec. 3, 2014,
743 SCRA 677, 687-688 .... 168, 170
Lima Land, Inc. *vs*. Cuevas,
635 Phil. 36, 53–54 (2010) 622
Lonzanida *vs.* Commission on Elections,
370 Phil. 625, 636 (1999) 484
Lopez *vs*. National Labor Relations Commission,
513 Phil. 731, 736 (2005) 617-618
Lozano *vs*. Ballesteros, 273 Phil. 43, 54 (1991) 165
Lucas *vs*. Dizon, 747 Phil. 88 (2014) 11
M.A. Jimenez Enterprises, Inc. *vs*. Ombudsman,
G.R. No. 155307, June 6, 2011,
650 SCRA 381, 392-394 418
Mabuhay Shipping Services, Inc. *vs.*
National Labor Relations Commission,
271 Phil. 142, 147 (1991) 964-966
Macaslang *vs*. Zamora, G.R. No. 156375,
May 30, 2011, 649 SCRA 92, 102-103 879
Magsaysay Maritime Corporation *vs*.
National Labor Relations Commission,
630 Phil. 352, 369 (2010) 733
Magsaysay Maritime Services *vs*. Laurel,
707 Phil. 210 (2013) 729
Malacat *vs*. Court of Appeals,
347 Phil. 462, 479-481 (1997) 659, 662-663
Manalili *vs*. Court of Appeals,
114 345 Phil. 632 (1997) 663-664
Manansan *vs*. Republic, 530 Phil. 104, 118 (2006) 747
Manese *vs*. Jollibee Foods Corporation,
G.R. No. 170454, Oct.11, 2012, 684 SCRA 34, 49 879
Manila Electric Company *vs*. Pasay
Transportation Co., 57 Phil. 600, 605 (1932) 414
Manila Electric Company *vs*. Province
of Laguna, 366 Phil. 428 (1999) 451

Page

Manila Jockey Club, Inc. *vs*. Trajano,
712 Phil. 254, 267-268 (2013) 620-621
Manila Railroad *vs*. Velasquez,
32 Phil. 286 (1915)... 988
Maquiran *vs*. Grageda, 491 Phil. 205 (2005) 368, 512, 535
Mariano *vs.* Echanez, A.C. No. 10373,
May 31, 2016 363
Martinez *vs*. Court of Appeals,
549 Phil. 683, 705 (2007) 1014, 1024
Martires *vs*. Chua, G.R. No. 174240,
March 20, 2013, 694 SCRA 38, 54 879
Mateo *vs.* Court of Appeals, 99 Phil. 1042 (1956) 67-68
Matuguina Integrated, Wood Products, Inc. *vs*.
Court of Appeals, G.R. No. 98310,
Oct. 24, 1996, 263 SCRA 490 418
Maunlad Transport, Inc., et al. *vs*. Manigo,
577 Phil. 319 (2008) 719
Maxwell Heavy Equipment Corporation *vs.*
Yu, 653 Phil. 338, 343 (2010)... 1037
Medina *vs.* Mayor Asistio, Jr.,
269 Phil. 225, 232 (1990) 818
Megaforce Security and Allied Services, Inc. *vs*.
Lactao, G.R. No. 160940, July 21, 2008,
559 SCRA 110, 116-117 598
Megan Sugar Corporation *vs*. Regional
Trial Court of Iloilo, Branch 68, Dumangas,
Iloilo, G.R. No. 170352, June 1, 2011,
650 SCRA 100, 110 998
Mendoza *vs.* Bautista, G.R. No. 143666,
March 18, 2005, 453 SCRA 691, 702-703 879
Mendoza *vs*. Esguerra, 703 Phil. 435 (2013) 15
Mendoza-Arce *vs*. Office of the Ombudsman,
G.R. No. 149148, April 5, 2002, 380 SCRA 325 410
Mercado *vs*. Allied Banking Corporation,
555 Phil. 411, 427 (2007) 758
Merciales *vs.* The Honorable Court of Appeals,
et al., G.R. No. 124171, March 18, 2002 203
Metrobank *vs*. Tobias III, G.R. No. 177780,
Jan. 25, 2012, 664 SCRA 165, 176-177 415

Page

Metropolitan Bank *vs*. Wong, 412 Phil. 207 (2001) 561
Metropolitan Bank & Trust Company *vs*.
Absolute Management Corporation,
G.R. No. 170498, Jan. 9, 2013,
688 SCRA 225, 238 997
Miclat, Jr. *vs*. People, G.R. No. 176077,
Aug. 31, 2011 916
Microsoft Corporation *vs*. Best Deal Computer
Center Corporation, 438 Phil. 408, 414 (2002) 477
Mindanao II Geothermal Partnership *vs*.
Commissioner of Internal Revenue,
706 Phil. 48 (2013) 81-82
Miranda *vs*. Raymundo, Jr., A.M. No. P-13-3163,
Dec. 1, 2014, 743 SCRA 343, 349 15
Mobil Oil Philippines, Inc. *vs*. Diocares, et al.,
140 Phil. 171 (1969) 551
Monana *vs*. MEC Global Shipmanagement
and Manning Corp., 746 Phil. 736, 745 (2014) 726
Moreno *vs*. Commission on Elections,
530 Phil. 279 (2006) 391
Moreno *vs*. San Sebastian College-Recoletos,
573 Phil. 533, 547 (2008) 618-619
Muaje-Tuazon *vs*. Wenphil Corporation,
540 Phil. 516, 526-527 (2006) 623
Nabus *vs*. Court of Appeals, 193 SCRA 732 [1991] 153
Nacar *vs*. Gallery Frames, 716 Phil. 267,
275-283 (2013) 354
Natalia Realty, Inc. *vs*. Court of Appeals,
440 Phil. 1, 19-20 (2002) 477
National Amnesty Commission *vs*. COA,
481 Phil. 279 (2004) 465, 468
National Power Corporation *vs*. Dr. Bongbong,
549 Phil. 93, 107 (2007) 747
City of Cabanatuan, 449 Phil. 233,
248-250 (2003) 450, 455
Spouses Zabala, G.R. No. 173520, Jan. 30, 2013,
689 SCRA 554, 555-556 780-781
Tuazon, 668 Phil. 301 (2011) 779

Page

Nationwide Security and Allied Services, Inc. *vs.* Valderama, G.R. No. 186614, Feb. 23, 2011, 644 SCRA 299, 306 600
Navaja *vs*. Hon. Manuel A. De Castro, or the Acting Presiding Judge of MCTC Jagna-Garcia-Hernandez, DKT Phils., Inc., represented by Atty. Edgar Borje, G.R. No. 182926, June 22, 2015 199
Naval *vs*. Court of Appeals, 518 Phil. 271 (2006) 157
Navarrete *vs*. People, 542 Phil. 496, 506 (2007) 322
NDC Tagum Foundation, Inc. *vs*. Sumakote, G.R. No. 190644, June 13, 2016 880
Nielson & Co., Inc. *vs*. Lepanto Consolidated Mining Co., 125 Phil. 204, 219 (1966) 148
Nieves *vs.* Duldulao, 731 Phil. 189, 199 (1954) 965
Nitura *vs*. Employees' Compensation Commission, 278 Phil. 302, 311 (1991) 967
NYK-Fil Ship Management Inc. *vs*. National Labor Relations Commission, 534 Phil. 725, 739 (2006) 732
OCA *vs*. Acampado, 721 Phil. 12, 31-32 (2013) 383
Aguilar, 666 Phil. 11, 22-23 (2011) 395
Amor, 745 Phil. 1, 8 (2014) 381
Flores, 603 Phil. 84, 93 (2009) 396-397
Ibay, 441 Phil. 474 (2002) 396
Lopez, 654 Phil. 602, 607 (2011) 381
Sirios, 457 Phil. 42 (2003 396
Viesca, 755 Phil. 385, 396 (2015) 381
Ocampo *vs*. Sanchez, 97 Phil. 472, 479-480 (1955) 532
Office of the Ombudsman *vs.* Magno, 592 Phil. 636, 652 (2008) 477
Olivarez *vs*. People, 503 Phil. 421, 432 (2005) 324-325
Ong *vs*. Alegre, 515 Phil. 442 (2006) 481
Ong *vs*. Jose Casim Genio, G.R. No. 182336, Dec. 23, 2009 203
Ong Chua *vs*. Carr, 53 Phil. 975-976, 983 (1929) 73
Pabalate *vs*. Echarri, Jr., 147 Phil. 472, 475 (1971) 149
Pagano *vs.* Nazarro, Jr., 560 Phil. 96 (2007) 379

Page

PAL *vs*. ALPAP, 424 Phil. 356 (2002) 299, 301, 303
Palma *vs*. Cristobal, 77 Phil. 712 (1946) 154
Pamintuan *vs*. Muñoz, 131 Phil. 213, 216 (1968) 532
Paredes *vs*. Feed The Children Philippines, Inc.,
G.R. No. 184397, Sept. 9, 2015,
730 SCRA 203, 220 230
People *vs*. Abat, 731 Phil. 304, 312 (2014) 185
Abat y Cometa, G.R. No. 202704, April 2, 2014 953
Abulon, 557 Phil. 428, 448 (2007) 274
Adora, G.R. Nos. 116528-31, July 14, 1997 908
Aguilar, 565 Phil. 233, 249 (2007) 273
Aguilar, G.R. No. 177749, Dec. 17, 2007 .... 286, 869, 888
Alberto, G.R. No. 179717, Feb. 5, 2010 977
Alcala, G.R. No. 201725, July 18, 2014 918
Amistoso *y* Broca, G.R. No. 201447,
Jan. 9, 2013 .... 286, 869, 888, 930
Ando, G.R. No. 212632, Aug. 24, 2016 917
Anquillano, 233 Phil. 456, 460-461 (1987) 819
Araza, G.R. No. 190623, Nov. 17, 2014 796
Arguelles, 294 Phil. 188, 194 (1993) 1025
Arrojado, G.R. No. 207041, Nov. 9, 2015,
774 SCRA 193 227
Aruta, 351 Phil. 868, 879-880 (1998) 655-656
Asis, in his capacity as Presiding Judge
of the Regional Trial Court of Biliran
Province, Branch 16, et al., G.R. No. 173089,
Aug. 25, 2010 202
Asislo *y* Matio, G.R. No. 206224, Jan. 18, 2016 1006
Ausa, G.R. No. 209032, Aug. 3, 2016 346
Ayangao, 471 Phil. 379 (2004) 670
Bagista, 288 Phil. 828 (1992) 659
Baldo *y* Santain, G.R. No. 175238,
Feb. 24, 2009 344
Balingan, 311 Phil. 290 (1995) 659
Bara, G.R. No. 184808, Nov. 14, 2011 974
Barberan, et al., G.R. No. 208759,
June 22, 2016 .... 909, 929-930
Barcela, G.R. No. 208760, April 23, 2014 .... 906, 928
Bartolome, G.R. No. 191726, Feb. 6, 2013 799

Page

Basbas, G.R. No. 191068, July 17, 2013 261
Battad, et al., G.R. No. 206368,
Aug. 6, 2014 .... 909, 926
Baun, 584 Phil. 560, 574 (2008) 831-832
Bayotas, G.R. No. 102007, Sept. 2, 1994,
236 SCRA 239, 255-256 1038
Berk *y* Bayogan, G.R. No. 204896,
Dec. 7, 2016 942
Bon, 444 Phil. 571, 584 (2003) 322
Bonaagua, 665 Phil. 750, 766 (2011) 321, 323
Borreros, 366 Phil. 360, 370 (1999) 1019
Breis, 767 Phil. 40 (2015) 669
Breis, G.R. No. 205823, Aug. 17, 2015 915
Brioso *alias* Talap-talap, G.R. No. 209344,
June 27, 2016 .... 321, 328
Brita, G.R. No. 191260, Nov. 24, 2014 976
Buclao, G.R. No. 208173, June 11, 2014 294
Buendia, G.R. Nos. 133949-51, Sept. 16, 1999,
314 SCRA 655, 665 1047
Bugho *y* Rompal, G.R. No. 208360,
April 6, 2016 332
Burce, G.R. No. 201732, March 26, 2014 .... 261, 926, 950
Butiong, 675 Phil. 621, 630 (2011) 332
Cabalquinto, 533 Phil. 703,
709 (2006) 265, 314, 342, 921
Cabalquinto, G.R. No. 167693, Sept. 19, 2006 256
Cabral y Valencia, G.R. No. 179946,
Dec. 23, 2009 .... 868, 887
Cadano, Jr., G.R. No. 207819,
March 12, 2014 .... 288, 867, 889, 892, 894
Cainglet, 123 Phil. 568 (1966) 155
Canoy, 459 Phil. 933 (2003) 892
Cantomayor, 441 Phil. 840, 847 (2002) 273
Cardenas, G.R. No. 190342, March 21, 2012 797
Carrera *y* Imbat, G.R. No. 215731,
Sept. 2, 2015 1004
Ceballos Jr. y Cabrales, G.R. No. 169642,
Sept. 14, 2007 .... 868, 887
Chua, 418 Phil. 565, 582 (2001) 927

Page

Chua, 444 Phil. 757 (2003) 658
Cogaed, 740 Phil. 212, 220, 228, 238,
239-240 (2014) 655-656, 658, 663
Combate, G.R. No. 189301, Dec. 15, 2010,
638 SCRA 797, 824 1048
Corial *y* Requiez, 451 Phil. 703, 709-710 (2003) 929
Corpuz, G.R. No. 175836, Jan. 30, 2009 260
Corpuz y Espiritu, G.R. No. 168101,
Feb. 13, 2006 906
Credo *Aka* "ONTOG," Randy Credo, et al.,
G.R. No. 197360, July 3, 2013 637
Cruz, 616 Phil. 424, 445 (2009) 688
Dalan y Paldingan, G.R. No. 203086,
June 11, 2014 .... 288, 949, 953-954
Dalinog, 262 Phil. 98, 111 (1990) 819
Daud, et al., G.R. No. 197539, June 2, 2014 636
De Jesus, G.R. No. 198794, Feb. 6, 2013 976-977
De la Cruz, 342 Phil. 854 (1997) 688
Dela Cruz, G.R. No. 193670,
Dec. 3, 2014 .... 974, 976-977
Dela Pena, et al., G.R. No. 207635, Feb. 18, 2015 918
Diu, 708 Phil. 218, 232 (2013) 819
Dizon, 453 Phil. 858, 883 (2003) 273
Domingcil, 464 Phil. 342, 357 (2004) 1016
Dulin, G.R. No. 171284, June 29, 2015,
760 SCRA 413, 425 .... 1015, 1017
Egagamao, G.R. No. 218809, Aug. 3, 2016 .... 209, 1038
Egan, G.R. No. 139338, May 28, 2002,
382 SCRA 326 1048
Enad, G.R. No. 205764, Feb. 3, 2016 1005
Enriquez, G.R. No. 197550, Sept. 25, 2013 797
Escarlos, 457 Phil. 580,
594-595 (2003) 1015, 1017-1018, 1024
Escordial, 424 Phil. 627, 651-652 (2002) 654
Escultor, 473 Phil. 717, 727 (2004) 273
Espenilla, G.R. No. 192253, Sept. 18, 2013 261
Estoya, 700 Phil. 490, 499 (2012) 273
Fragante, 657 Phil. 577, 592 (2011) 269

Page

Galgati *y* Gardoce, G.R. No. 207231,
June 29, 2016 337
Gamboa, G.R. No. 172707,
Oct. 1, 2013 .... 295, 871, 894-895
Gani, G.R. No. 195523, June 5, 2013 261
Ganigan, G.R. No. 178204, Aug. 20, 2008,
562 SCRA 741 637
Gapasan, G.R. No. 110812, March 29, 1995,
243 SCRA 53, 59 1047
Gasacao, G.R. No. 168445, Nov. 11, 2005 637
Gerente, 292-A Phil. 34 (1993) 660
Godines, G.R. No. 93410, May 7, 1991,
196 SCRA 765, 773 1048
Gregorio, G.R. No. 194235, June 8, 2016 687
Guillermo, 550 Phil. 176, 188 (2007) 831
Hambora, G.R. No. 198701, Dec. 10, 2012 795
Ilao, 357 Phil. 656, 671 (1998) 828, 833
Jamilosa, G.R. No. 169076, Jan. 27, 2007 637
Jugueta, G.R. No. 179477, Feb. 6, 2008 262
Jugueta, G.R. No. 202124,
April 5, 2016 .... 252, 274, 337, 346, 833, 910
Lafaran, G.R. No. 208015, Oct. 14, 2015 917
Lagangga *y* Dumpa, G.R. No. 207633,
Dec. 9, 2015 345
Laguio, Jr., G.R. No. 128587, March 16, 2007,
518 SCRA 393, 408-409 202
Laog, 674 Phil. 444, 463 (2011) 273
Lapasaran, G.R. No. 198820, Dec. 10, 2012 797
Lapitaje, 445 Phil. 729, 748 (2003) 654
Lastrollo *y* Doe, G.R. No. 212631, Nov. 7, 2016 345
Layag, G.R. No. 214875, Oct. 17, 2016 208
Libnao, 443 Phil. 506 (2003) 670
Lim, 615 Phil. 769, 782 (2009) 976
Lindo, 641 Phil. 635, 647 (2010) 321
Lising, 341 Phil. 801 (1997) 659
Liwanag, 415 Phil. 271, 295 (2001) 832
Lopez, Jr. *y* Mancilla, 315 Phil. 59, 71-72 (1995) 654
Lugnasin, G.R. No. 208404, Feb. 24, 2016 687

Page

Magallanes, 231 Phil. 89, 98 (1987) 821
Maglian *y* Reyes, G.R. No. 189834,
March 30, 2011 939
Malana, 646 Phil. 290, 310 (2010) 833
Manago, G.R. No. 212340, Aug. 17, 2016 667
Manalili *y* Jose, G.R. No. 191253,
Aug. 28, 2013 637
Manigo *y* Macalua, G.R. No. 194612,
Jan. 27, 2014 907
Maongco, 720 Phil. 488, 502 (2013) 1037
Mariacos, 635 Phil. 315 (2010) 669
Martinez y Angeles, 652 Phil. 347, 359 (2010) 654
Maspil, Jr., 266 Phil. 815 (1990) 659
Mejorada, G.R. No. 102705, July 30, 1993,
224 SCRA 837, 852 1048
Menil, Jr., G.R. Nos. 115054-66, Sept. 12, 2000,
340 SCRA 125 422
Montevirgen, 723 Phil. 534, 542 (2013) 1037
Monticalvo *y* Magno, G.R. No. 193507,
Jan. 30, 2013 .... 294, 955
Montilla, 349 Phil. 640 (1998) 659
Muros, G.R. No. 142511, Feb. 16, 2004,
423 SCRA 69 1048
Nuevas, 545 Phil. 356, 371–372 (2007) 657, 662, 666
Ofemaniano, G.R. No. 187155, Feb. 1, 2010 259-260
Opong y Taesa, G.R. No. 177822, June 17, 2008 907
Padit, G.R. No. 202978, Feb. 1, 2016 332
Pamintuan *y* Sahagun, G.R. No. 192239,
June 5, 2013 .... 906, 926
Pangilinan, 676 Phil. 16, 32 (2011) 334
Panique, 375 Phil. 227, 238 (1999) 831
Pareja, 724 Phil. 759, 774 (2014) 273
Pat, 324 Phil. 723, 741–742 (1996) 690
Perez @ Dalegdeg, G.R. No. 182924,
Dec. 24, 2008 .... 907, 929
Pusing *y* Tamor, G.R. No. 208009,
July 11, 2016 .... 292, 295, 871, 891, 894
Racho, 640 Phil. 669, 676 (2010) 654, 657-658, 662

Page

Rellon, 249 Phil. 73 (1988) 1026
Rellota, 640 Phil. 471, 483 (2010) 335
Rellota *y* Tadeo, G.R. No. 168103,
Aug. 3, 2010 930
Ros *y* Ortega, et al., G.R. No. 201146,
April 15, 2015 .... 800, 1004
Rosauro, G.R. No. 209588, Feb. 18, 2015 796
Sabadlab, G.R. No. 175924, March 14, 2012,
668 SCRA 237, 248-249 1048
Sabal, G.R. No. 201861, June 2, 2014 262
Sagaydo, 395 Phil. 538 (2000) 637
Salibad, G.R. No. 210616, Nov. 25, 2015,
775 SCRA 566, 584 252
Salvador *y* Bal Verde, et al., G.R. No. 190621,
Feb. 10, 2014 .... 975, 977
Samson, G.R. No. 214883, Sept. 2, 2015 937
Sanico, 741 Phil. 356, 374 (2014) 1014-1015
Santiago. in his capacity as Presiding Judge
of Branch 101 of the Regional Trial Court
of Quezon City, et al., G.R. No. 80778,
June 20, 1989 202-203
Santos, 347 Phil. 723 (1997) 689
Santos, G.R. No. 205308, Feb. 11, 2015,
750 SCRA 471 335
Sembrano, 642 Phil. 476, 490-491 (2010) 1037
Sic-Open *y* Dimas, G.R. No. 211680,
Sept. 21, 2016 795
Sinoc, 341 Phil. 355 (1997) 688
Soberano, 346 Phil. 449, 461 (1997) 689
Solayao, 330 Phil. 811 (1996) 664
Suarez, 496 Phil. 231, 243 (2005) 273
Tabio, G.R. No. 179477, Feb. 6, 2008 261
Tablang, G.R. No. 174859, Oct. 30, 2009 951
Taperla, G.R. No. 142860, Jan. 16, 2003,
395 SCRA 310, 314 1047
Timon, 346 Phil. 572 (1997) 654
Tolentino, G.R. No. 208686, July 1, 2015,
761 SCRA 332, 357 638-639

Page

Tudtud, 458 Phil. 752, 773 (2003) 662
Ubongen, 409 Phil. 140, 149-150 (2001) 688
Uy, G.R. No. 158157, Sept. 30, 2005,
471 SCRA 668, 680-681 202
Ventura, Sr., G.R. No. 205230, March 12, 2014 294
Vidaña, G.R. No. 199210, Oct. 23, 2013 293
Villamor, G.R. No. 202187, Feb. 10, 2016 893
Villanueva, 215 Phil. 58, 60 (1984) 1025
Vinecario, 465 Phil. 192, 206 (2004) 667-668
Viojela *y* Asartin, G.R. No. 177140,
Oct. 17, 2012 870
People, et al. *vs.* Court of Appeals, 21st Division,
Mindanao Station, et al., G.R. No. 183652,
Feb. 25, 2015 .... 202, 345
Peralta *vs.* Omelio, 720 Phil. 60 (2013) 538
Perez *vs.* Philippine Telegraph and Telephone Co.,
602 Phil. 522, 537–538 (2009) 623
Periquet *vs.* National Labor Relations Commission,
264 Phil. 1115, 1122 (1990) 236
PH Credit Corporation *vs.* Court of Appeals,
421 Phil. 821 (2001) 537
Philippine Airlines, Inc. *vs.* Airline Pilots Association
of the Phils., 424 Phil. 356 (2002) 304
Court of Appeals, 274 Phil. 624 (1997) 159
Court of Appeals, 341 Phil. 624 (1997) 159
Philippine American Accident Insurance Co., Inc.
vs. Flores, 186 Phil. 563, 565–566 (1980) 531
Philippine Bank of Communications *vs.*
CIR, 361 Phil. 96, 928-929 (1999) 29-30
Philippine National Bank *vs.* Nepomuceno
Productions, Inc., 442 Phil. 655 (2002) 562
Rodriguez, et al., G.R. No. 170325,
Sept. 26, 2008 467
Spouses Rabat, 398 Phil. 654 (2000) 563
Philippine Rabbit Bus Lines, Inc. *vs.* Goimco, Sr.,
512 Phil. 729, 733-734 (2005) 477
Philippine Savings Bank *vs.* Barrera,
G.R. No. 197393, June 15, 2016 228

Page

Pleyto *vs*. PNP-Criminal Investigation and
Detection Group, 563 Phil. 842 (2007) 49
Posadas *vs*. Court of Appeals, 266 Phil. 306 (1990) 670
Prudential Bank *vs*. Alviar, 502 Phil. 595 (2005) 558, 560
Pryce Corporation *vs*. China Banking
Corporation, 727 Phil. 1 (2014) 850-851
Querubin *vs*. Commission on Elections
En Banc, G.R. No. 218787, Dec. 8, 2015,
776 SCRA 715, 769 102
Quimvel *vs*. People, G.R. No. 214497,
April 18, 2017 324-325
Quizora *vs*. Denholm Crew Management
(Philippines), Inc., 676 Phil. 313, 327 (2011) 730
Racoma *vs*. Fortich, 48-A Phil. 454 (1971) 154
Re: Administrative Case for Dishonesty
Against Elizabeth Ting, Court Secretary I,
and Angelita C. Esmerio, Clerk III, Office
of the Division Clerk of Court, Third Division,
502 Phil. 264 (2005) 396
Re: Incident Report Relative to a Criminal
Case Filed Against Garduce, A.M. No. P-15-3391,
Nov. 16, 2015, 775 SCRA 35, 38-40 382
Re: Verified Complaint dated July 13, 2015
of Umali, Jr. *vs*. Hernandez, IPI No. 15-35-SB-J,
Feb. 23, 2016, 784 SCRA 483, 492 374
Rebellion *vs*. People, 637 Phil. 339, 345 (2010) 654
Republic of the Philippines, represented by the
Toll Regulatory Board *vs*. C.C. Unson, Company,
Inc., G.R. No. 215107, Feb. 24, 2016 780-782
Republic *vs*. Andaya, G.R. No. 160656,
June 15, 2007, 524 SCRA 671 993
Asia Pacific Integrated Steel Corporation,
G.R. No. 192100, March 12, 2014, 719 SCRA 50 779
Court of Appeals, 433 Phil. 106, 123 (2002) 786
Court of Appeals, 612 Phil. 965, 977 (2009) 747
Court of Appeals, G.R. No. 116111, Jan. 21, 1999,
301 SCRA 366, 377 998
Court of Appeals, G.R. No. 147245,
March 31, 2005, 454 SCRA 516, 536 994

Page

Court of Appeals, et al., G.R. No. 160379, Aug. 14, 2009 783
Gimenez, G.R. No. 174673, Jan. 11, 2016, 778 SCRA 261, 310-311 759
Lim, G.R. No. 161656, June 29, 2005, 462 SCRA 265 988
Manimtim, et al., 661 Phil. 158, 174 (2011) 184
Mega Pacific eSolutions, Inc., G.R. No. 184666, June 27, 2016 421
Regulto, G.R. No. 202051, April 18, 2016, 790 SCRA 1 996
Rural Bank of Kabacan, Inc., et al., G.R. No. 185124, Jan. 25, 2012 779
Salem Investments Corporation, G.R. No. 137569, June 23, 2000, 334 SCRA 320 988
Soriano, G.R. No. 211666, Feb. 25, 2015, 752 SCRA 71, 87 748
Spouses Bautista, G.R. No. 181218, Jan. 28, 2013, 689 SCRA 349 .... 780, 782
Resurreccion *vs*. People, 738 Phil. 704, 720 (2014) 122
Reyes *vs*. Noblejas, 129 Phil. 256, 262 (1967) 67
Reyes-Domingo *vs*. Morales, 396 Phil. 150 (2000) 396
Ricalde *vs*. People, 751 Phil. 793, 816 (2015) 834
Rivera III *vs*. Commission on Elections, 551 Phil. 37 (2007) 481
Roberts, Jr. *vs*. Court of Appeals, G.R. No. 113930, March 5, 1996, 254 SCRA 307 416
Rodriguez-Manahan, Presiding Judge, Municipal Trial Court, San Mateo, Rizal *vs*. Flores, A.C. No. 8954, Nov. 13, 2013 362
Romero and Domingo *vs*. Singson, G.R. No. 200969, Aug. 3, 2015 741
Rural Bank of Cabadbaran, Inc. *vs*. Melecio-Yap, 740 Phil. 35, 49 (2014) 759-760
Russel *vs*. Ebasan, 633 Phil. 384, 390-391 (2010) 746
Salazar *vs*. Flor de Lis Meneses, 118 Phil. 512, 514 (1963) 67
Saldariega *vs*. Panganiban, G.R. No. 211933, April 15, 2015, 755 SCRA 627 415

Page

Salvaloza *vs*. National Labor Relations Commission,
G.R. No. 182086, November 24, 2010,
636 SCRA 184, 197-198 598
Salvatierra *vs*. Court of Appeals,
329 Phil. 758, 775 (1996) 143
San Miguel Properties Phils., Inc. *vs*.
Gucaban, 669 Phil. 288, 297 (2011) 229
Sandico, Sr. *vs*. Piguing,
149 Phil. 422, 434 (1971) 532-533
Sandoval *vs*. Court of Appeals,
329 Phil. 48, 60, 62 (1996) 168, 171
Sari Sari Group of Companies *vs*. Kamao,
583 Phil. 564, 580-581 (2008) 235
Sazon *vs*. Sandiganbayan, 598 Phil. 35, 45-56 (2009) 690
S.C. Megaworld Construction and
Development Corporation *vs*. Engr. Parada,
717 Phil. 752, 764 (2013) 554
Sebuguero *vs*. National Labor Relations
Commission, G.R. No. 115394, Sept. 27, 1995,
248 SCRA 532, 543-544 598
Secretary of the Department of Public Works
and Highways *vs*. Spouses Tecson,
G.R. No. 179334, April 21, 2015 786
Seno *vs*. Mangubat, 240 Phil. 121, 131 (1987) 167
Serrani *y* Cervantes *vs*. People, G.R. No. 175023,
July 5, 2010 876
Sindac *vs*. People, G.R. No. 220732, Sept. 6, 2016 654
Singh *vs*. Liberty Insurance Corp.,
118 Phil. 532, 535 (1963) 879
Siy *vs*. National Labor Relations Commission,
505 Phil. 265, 274 (2005) 850
Smart Communications, Inc. *vs*. Municipality of Malvar,
Batangas, 727 Phil. 430, 447 (2014) 448
Solidbank Corporation *vs*. Mindanao Ferroalloy
Corporation, 502 Phil. 651 (2005) 553
South Pachem Development, Inc. *vs*. CA,
488 Phil. 87, 98 (2004) 565
Spouses Aggabao *vs*. Parulan, Jr., et al.,
644 Phil. 26, 38 (2010) 762, 764-765

Page

Spouses Bautista *vs*. Silva, 533 Phil. 627 (2006) 755
Spouses Bernales *vs*. Heirs of Julian Sambaan,
624 Phil. 88 (2010)... 740
Spouses Berot *vs*. Siapno, 738 Phil. 673, 690 (2014) 537
Spouses De Guzman *vs*. Agbagala,
569 Phil. 607, 614 (2008) 740
Spouses De Leon, et al. *vs*. BPI,
721 Phil. 839, 848 (2013) 183, 186
Spouses Martir *vs*. Spouses Verano,
529 Phil. 120, 125-126 (2006) 529-530
Spouses Natino *vs*. Intermediate Appellate Court,
274 Phil. 602, 611 (1991) 67
Spouses Pahang *vs*. Judge Vestil,
478 Phil. 189 (2004) 70, 74
Spouses Ravina *vs*. Villa Abrille, et al.,
619 Phil. 115 (2009) 765-766
Spouses Reyes *vs*. Montemayor,
614 Phil. 256, 274-275 (2009) 740
Spring Homes Subdivision Co., Inc. *vs.*
Spouses Tablada, Jr., G.R. No. 200009,
Jan. 23, 2017 166
Sps. Vilbar vs. Opinion, 724 Phil. 327,
348-349 (2014) 757
St. Michael Academy *vs*. NLRC,
354 Phil. 491, 509-510 (1998) 231
Sto. Tomas, et al. *vs*. Rey Salac, et al.,
G.R. Nos. 152642, 152710, 167590, 182978-79,
184298-99, Nov. 13, 2012 200
Suliguin *vs.* Commission on Elections,
520 Phil. 92, 107 (2006) 477
Sumira *vs*. Vistan, 74 Phil. 138 (1943) 154
Sy *vs.* Philippine Transmarine Carriers, Inc., et al.,
703 Phil. 190, 199 (2013) 964
T & H Shopfitters Corp./Gin Queen Corp. *vs.*
T & H Shopfitters Corp./Gin Queen Workers
Union, 728 Phil. 168, 180-181 (2014) 703
Talaga *vs*. COMELEC, 696 Phil. 786, 833-834 (2012) 481
Talosig *vs*. United Philippine Lines, Inc.,
739 Phil. 774, 783 (2014) 729

Page

Tan *vs*. Dela Cruz, Jr., 482 Phil. 782 (2004) 13
Tan *vs*. Spouses Antazo, 659 Phil. 400, 404 (2011) 477
Tatel *vs*. JLFP Investigation and Security
Agency, Inc., G.R. No. 206942, Dec. 9, 2015,
777 SCRA 347, 353 602
Telefunken Semiconductors Employees Union-FFW
vs. Court of Appeals, 401 Phil. 776 (2000) 702
Tenoso *vs*. Echanez, 709 Phil. 1 (2013) 363
Teresa T. Gonzales La'O & Co., Inc. *vs*.
Sheriff Hatab, 386 Phil. 88, 92-93 (2000) 11
TESDA *vs*. The Commission on Audit, et al.,
729 Phil. 60, 76 (2014) 467
TESDA *vs*. The Commission on Audit, et al.,
G.R. No. 196418, Feb. 10, 2015, 250 SCRA 247 466
Tetangco *vs*. Ombudsman, G.R. No. 156427,
Jan. 20, 2006, 479 SCRA 249, 254 420
The Law Firm of Chavez Miranda Aseoche *vs*.
Dicdican, 600 Phil. 65, 69 (2009) 374
Toledo *vs*. Court of Appeals, G.R. No. 167838,
Aug. 5, 2015, 765 SCRA 104, 115 .... 137, 140
Tolentino-Prieto *vs*. Elvas, G.R. Nos. 192369
& 193685, Nov. 9, 2016 879
Tomada, Sr. *vs*. RFM Corp., 615 Phil. 449 (2009) 618
Torres *vs*. National Labor Relations Commission,
386 Phil. 513, 520 (2000) 532
Traders Royal Bank *vs*. Spouses Castañares,
651 Phil. 236, 247 (2010) 557
Turner *vs*. Lorenzo Shipping Corporation,
650 Phil. 372, 390 (2010) 104
Typoco *vs*. Commission on Elections,
628 Phil. 288 (2010) 474
U.S. *vs*. Ballena, 18 Phil. 382, 385 (1911) 167
Union Bank of the Phils. *vs*. Court of Appeals,
412 Phil. 64, 75 (2001) 68
Universal Canning, Inc. *vs*. Court of Appeals,
G.R. No. 215047, Nov. 23, 2016 618
Universal Robina Sugar Milling Corp. *vs*. Albay,
G.R. No. 218172, March 16, 2016 618-619

Page

Uyboco *vs.* People, G.R. No. 211703, Dec. 10, 2014,
744 SCRA 688, 692 .... 178-179, 184
Valmonte *vs.* De Villa, 258 Phil. 838, 843 (1989) 655, 657
Valmonte *vs.* De Villa, 264 Phil. 265, 269 (1990) 667-668
Velasco *vs.* COA, 695 Phil. 226 (2012) 467
Villarama *vs.* National Labor Relations Commission,
306 Phil. 310 (1994) 618
Visayan Refining Co. *vs.* Camus and Paredes,
40 Phil. 550 (1919) 988
VSD Realty & Development Corporation *vs.*
Uniwide Sales, Inc., et al., 698 Phil. 62, 78 (2012) 179
Webb *vs.* De Leon, 317 Phil. 758 (1995) 119
Wee *vs.* Mardo, 735 Phil. 420, 433 (2014) 157
Woodridge School *vs.* Benito,
591 Phil. 154, 170 (2008) 617-618
WT Construction, Inc. *vs.* Department
of Public Works and Highways,
555 Phil. 642, 649-650 (2007) 104
WT Construction, Inc. *vs.* Province of Cebu,
G.R. Nos. 208984 & 209245, Sept. 16, 2015 879
Yalung *vs.* Pascua, 411 Phil. 765 (2001) 398
Yboleon *vs.* Sison, 59 Phil. 281, 290 (1933) 529-530
Yong Chan Kim *vs.* People of the Philippines, et al.,
G.R. No. 84719, Aug. 10, 1989 224
Yu *vs.* Palaña, 580 Phil. 19 (2008) 364
Zamudio *vs.* Auro, 593 Phil. 575, 584 (2008) 15

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. III, Sec. 1 463
Sec. 2 .... 652, 655-656
Sec. 3(2) 652, 655, 671
Sec. 9 988

Page

Art. VII, Sec. 13 468
Sec. 21 23
Art. VIII, Sec. 1 414
Art. IX (C), Secs. 2-3 480
Art. X, Sec. 5 450
Sec. 8 .... 480, 487
Art. XI, Sec. 13 43
Sec. 13(1) 413
Art. XIV, Sec. 2(2) 831

B. STATUTES

Act
Act No. 3135 .... 59, 66-67, 74, 548, 563
Sec. 6 .... 66-68, 74
Act No. 4103 337-338
Act No. 4180 295
Administrative Code
Sec. 2(1) 27
Batas Pambansa
B.P. Blg. 129, Secs. 9, 19 139
B.P. Blg. 337 440
B.P. Blg. 881, Secs. 12, 68 477
Civil Code, New
Art. 13 71
Art. 21 423
Arts. 27-28, 33 104
Art. 311 831
Art. 434 179
Arts. 500, 552, 573, 839 423
Arts. 1130, 1390(2) 423
Art. 1144 .... 142, 144
Arts. 1170-1171 423
Art. 1207, par. 2 537
Arts. 1293, 1344 554
Art. 1359 424
Art. 1381(3) 424
Art. 1390 146
Art. 1391 146-147

Page

Art. 1456 .... 142, 143-144
Art. 1601 73
Art. 1606 73-74
Arts. 1838, 1909, 2220 423
Art. 2028 529
Art. 2037 529-530
Art. 2085 561
Art. 2125 551
Art. 2154 997
Code of Conduct for Court Personnel
Canon I, Sec. 2 381
Canon III, Sec. 2(e) 379, 381-382
Code of Judicial Conduct
Canon 2 399
Rule 2.01 399
Rule 2.03 399
Code of Professional Responsibility
Canon 1, Rule 1.01 361
Canon 10, Rule 10.01 361
Canons 17-18 361
Commonwealth Act
C.A. No. 141, Sec. 59 992
Secs. 61, 67 991-992
Sec. 112 .... 982-985, 989-990
Corporation Code
Sec. 74 854-856
Sec. 144 .... 855, 857
Executive Order
E.O. No. 124-A 577, 586
E.O. No. 292 27
Family Code
Art. 45 423
Art. 124 765-766
General Banking Act
Sec. 78 68
Labor Code
Art. 172 963-964
Art. 282 878
Art. 287 .... 297, 299, 301-303, 305

Page

Art. I, Sec. 2 304
Art. II, Sec. 12 303
Art. 294 .... 625 -626
Art. 297 .... 610, 617, 620, 878
Art. 297(a) 617, 619-620
Art. 297(c) 620
Local Government Code
Sec. 16 584
Sec. 40 .... 478, 483
Sec. 40 (b) 476
Sec. 43 481
Sec. 56 574
Sec. 130 451
Secs. 132-133 451
Sec. 142, Art. II 440-441
Sec. 143 .... 438, 446, 453
Sec. 143, Art. II 440-441
Sec. 143(d) 446-447, 456
Sec. 151 .... 438-439, 453
Sec. 151, par. 2 456
Sec. 186 451-452
Sec. 191 .... 436-438, 443-444, 447, 449
National Internal Revenue Code
Sec.112 83
Sec. 112 (C) 81, 84-86
Sec. 112 (D) 80
Sec. 204 30
Sec. 204 (C) 24
Sec. 229 .... 21, 23-24, 30
Omnibus Election Code
Sec. 12 .... 478, 483, 487
Sec. 18 487
Sec. 68 .... 478, 483
Sec. 74 481
Sec. 78 .... 475-476, 480-481
Penal Code, Revised
Art. 11 937
Art. 14 424

Page

Art. 63 833
Art. 89 (1) 207-208, 1038
Art. 183 38
Arts. 185-189, 213 424
Art. 214 in relation to Arts. 315-318 424
Art. 248 .... 941-942, 1009, 1027
Art. 266-A 256, 259, 262, 269, 274
par. 1 in relation to Art. 266-B 265, 343
Art. 266-B 265, 274, 287-288, 317
Art. 267 686-687
Art. 294(5) 686, 691
Art. 315 .... 424, 628, 633-634, 638
Art. 335 322
Art. 336 .... 313, 322, 325, 327, 335
Art. 342 1047

Presidential Decree
P.D. No. 87 570
P.D. No. 424 577
P.D. No. 464, Sec. 89, par. H 136
P.D. No. 968, Sec. 16 399
Sec. 17 393
P.D. No. 1067 577
P.D. No. 1529, Sec. 44 168
Sec. 53, par. 3 142
P.D. No. 1594 102
P.D. No. 1866, Sec. 3 387
P.D. No. 2004 .... 983-984, 988, 990, 992

Republic Act
R.A. No. 730 .... 983, 988, 990-991
Sec. 1 992
Sec. 2 .... 983, 992-993
R.A. No. 3019, Sec. 3(e) 108-110, 112, 116
Secs. 7-8 51
R.A. No. 5495 570
R.A. No. 6395 30
R.A. No. 6425 1001
R.A. No. 6713, Sec. 8 38
Sec. 10 .... 42, 45-46

Page

R.A. No. 7160 .... 434, 439-440, 444
Sec. 43 475-476
Sec. 66(b) 479
Sec. 131 440
R.A. No. 7610 .... 275, 280, 313, 322, 863
Sec. 3(b) 324
Sec. 5(b), Art. III 322-325, 327, 335
Sec. 10 266
Sec. 31, Art. XII 335-336
Sec. 31(f), Art. XII 336
R.A. No. 7659 .... 686, 689
R.A. No. 8042 .... 628, 638, 640
Sec. 6 636
Sec. 9 .... 192, 194, 196-198, 200
R.A. No. 8293, Sec. 121.1(d) 837
R.A. No. 8353 .... 274-275, 327, 346
R.A. No. 8484 803
Sec. 3(a)(f) 812
Sec. 3(b) 813
Sec. 9(a) (e) 801, 807, 812-814
Sec. 10 .... 809, 814
R.A. No. 8791 548
Sec. 2 466
R.A. No. 8974 785
Sec. 5 780
R.A. No. 9165 .... 799, 977-978
Sec. 5, Art. II 790, 794, 800, 971, 977
Sec. 11, Art. II 648, 913-914, 1031, 1035
Sec. 21, Art II 975
Sec. 21 .... 796, 800, 917, 1004
Sec. 86 800
R.A. No. 9262 314
Sec. 40 343
Sec. 44 266
R.A. No. 9337 83
R.A. No. 9346 .... 252, 274-275, 336-337
Sec. 2 .... 910, 930
Sec. 3 .... 295, 338, 871, 894, 1048

Page

Rules of Court, Revised
Rule 3, Sec. 7 165
Sec. 8 166-167
Rule 9, Sec. 1 352-353
Rule 13, Sec. 3 746
Rule 15, Sec. 3 534
Rule 37, Sec. 1 746
Rule 39, Sec. 14 12
Sec. 47 .... 152, 845
Rule 41, Sec. 3 746
Rule 43 .... 410, 842
Rule 45 .... 33, 128, 159, 177-178
Sec. 1 44
Rule 57, Sec. 1, par. (d) 425
Rule 64 in relation to Rule 65 .... 461, 694
Rule 65 .... 107, 410, 477, 501, 519
Sec. 1 227
Rule 67, Sec. 6 782
Sec. 8 781
Rule 70, Sec. 16 739
Rule 112, Sec. 3 119-120
Rule 113, Sec. 5(a) 915-916
Sec. 5(b) 659-661
Rule 117, Sec. 3 192
Rule 122, Sec. 1 196
Sec. 3 830
Rule 124, Sec. 13 1009
Rule 126, Sec. 13 656
Rule 131, Sec. 1 182
Rule 132, Sec. 19 759
Sec. 20 759
Sec. 23 758
Sec. 30 .... 164, 759
Rule 133, Sec. 1 183
Rule 135, Sec. 6 511
Rule 138, Sec. 3 360
Sec. 27 363
Rule 139-B, Sec. 1 372

Page

Rule 140 399
Sec. 1 372
Sec. 2 373
Secs. 10(1), 11(C) 496
Rule 141, Sec. 10 .... 8, 10, 13
Rules on Civil Procedure, 1997
Rule 45 607
Rule 57 425
Rule 64 474
Rule 65 472
Rules on Criminal Procedure
Rule 110, Sec. 15(a) 200
Rule 113, Sec. 5 657
Sec. 5(b) 662
Rule 120, Sec. 4 .... 319, 322
Sec. 5 322
Rule 126, Sec. 4 656
Water Code
Art. 2(c) 585
Art. 3 585
Arts. 13, 28-30 586

C. OTHERS

Civil Service Rules and Regulations
Secs. 2-3 394
Implementing Rules and Regulations (IRR)
of Presidential Decree No. 1594 95
Implementing Rules and Regulations of Republic Act No. 9165
Sec. 21 653
Sec. 21, Art. II 799
Omnibus Rules Implementing Book V of E.O. No. 292
Sec. 22 37
Revised Implementing Rules and Regulations of
Republic Act No. 9184
Sec. 34.3 102

Page

Revised Rules on Administrative Cases in the
Civil Service (RRACCS)
Rule 10, Sec. 46(A) 14
Sec. 46(D) 15
Rules and Regulations Implementing Republic Act No. 9262,
Rule XI, Sec. 63 342
Rules and Regulations of R.A. No. 7610
Sec. 2(h) 326
Uniform Rules on Administrative Cases in the
Civil Service (URACCS)
Rule IV, Sec. 52 56
Sec. 58(a) 56

D. BOOKS
(Local)

Eric R. Recalde, The Philippine Local Tax and
Tariff & Customs Laws, 163 (2011) 445
Regalado, Remedial Law Compendium,
Vol. 1, p. 746 783

II. FOREIGN AUTHORITIES

BOOKS

24 Am Jur 2d 689
Black's Law Dictionary, 6th Ed., p. 122 26
Black's Law Dictionary, 8th Ed., p. 612 26
31 CJS 675-676 998