PHILIPPINE REPORTS

VOL. 811

JUNE 19, 2017 TO JUNE 28, 2017

VOLUME 811

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 19, 2017 TO JUNE 28, 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

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

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

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

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

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 11600. June 19, 2017]

ROMULO DE MESA FESTIN, *complainant, vs.* **ATTY. ROLANDO V. ZUBIRI,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF LAWYERS TO RESPECT THE LEGAL PROCESSES; VIOLATED IN CASE AT BAR.—** Canon 1 of the CPR mandates lawyers to uphold the Constitution and promote respect for the legal processes. Additionally, Canon 8 and Rule 10.03, Canon 10 of the CPR require lawyers to conduct themselves with fairness towards their professional colleagues, to observe procedural rules, and not to misuse them to defeat the ends of justice. x x x Contrary to these edicts, respondent improperly filed the five (5) motions as "manifestations" to sidestep the requirement of notice of hearing for motions. In effect, he violated his professional obligations to respect and observe procedural rules, not to misuse the rules to cause injustice, and to exhibit fairness towards his professional colleagues.

2. **ID.; COURT HAS THE PLENARY POWER TO DISCIPLINE ERRING LAWYERS.—** The Court has the plenary power to discipline erring lawyers. In the exercise of its sound judicial discretion, it may impose a less severe punishment if such penalty would achieve the desired end of reforming the errant lawyer.

APPEARANCES OF COUNSEL

Sara Lisa Alquizalas-Abella for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from an affidavit-complaint[1] filed by complainant Romulo De Mesa Festin (complainant) against respondent Atty. Rolando V. Zubiri (respondent) before the Integrated Bar of the Philippines (IBP) for gross violations of the Code of Professional Responsibility (CPR).

The Facts

Complainant alleged that he was elected as Mayor of the Municipality of San Jose, Occidental Mindoro in the May 2013 elections. His opponent, Jose Tapales Villarosa (Villarosa), filed an election protest against him before the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46 (RTC).[2] After deciding in favor of Villarosa, the RTC issued an Order[3] dated January 15, 2014 (January 15, 2014 Order), granting his motion for execution pending appeal, *viz.*:

> WHEREFORE, the Motion for Execution Pending Appeal is GRANTED.
>
> The OIC-Branch Clerk of Court [(COC)] is hereby directed to issue a Writ of Execution Pending Appeal **after the lapse of twenty (20) working days** to be counted from the time [complainant's] counsel receives a copy of this Special Order, **if no restraining**

---

[1] *Rollo,* pp. 2-13.

[2] See *id*. at 5-6.

[3] *Id*. at 14-16. Penned by Presiding Judge Gay Marie F. Lubigan-Rafael.

order or status quo order is issued pursuant to Section 11 (b),[4] Rule 14 of A.M. No. 07-4-15-SC.[5] (Emphasis supplied)

Distressed, complainant filed a petition for *certiorari*[6] before the Commission on Elections (COMELEC), seeking a Temporary Restraining Order (TRO) against the issuance of the writ of execution pending appeal.[7] In an Order[8] dated February 13, 2014, the COMELEC issued a TRO, directing Hon. Gay Marie F. Lubigan-Rafael (RTC Judge), in her official capacity as Presiding Judge of the RTC, to cease and desist from enforcing the January 15, 2014 Order, effective immediately.[9] Accordingly, the RTC issued another Order[10] dated February 25, 2014 (February 25, 2014 Order), pertinent portion of which reads:

> In view thereof, the OIC-Branch [COC] is directed **NOT TO ISSUE** a Writ of Execution in accordance with the [January 15, 2014] Order until further notice.[11]

---

[4] Section 11 (b), Rule 14 of A.M. No. 07-4-15-SC states:

> Section 11. Execution pending appeal. – x x x.
>
> (b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or status quo order from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or *status quo* order is issued. During such period, the writ of execution pending appeal shall be stayed. (Underscoring supplied)

[5] *Rollo*, p. 15

[6] See Petition for *Certiorari* (with a Most Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) dated January 31, 2014; *id*. at 17-63.

[7] See *id*. at 61.

[8] *Id*. at 66-67. Signed by Presiding Commissioner Lucenito N. Tagle.

[9] See *id*. at 66.

[10] *Id*. at 68-69.

[11] *Id*. at 68.

Despite the TRO and the RTC's February 25, 2014 Order, respondent, as counsel of Villarosa, filed five (5) manifestations[12] addressed to the COC insisting on the writ's issuance. Notably, he did not serve copies of these manifestations to the other party.[13]

In these manifestations, respondent claimed that his client received the RTC's January 15, 2014 Order on January 18, 2014, and counting from said date, the twenty-day period ended on February 12, 2014.[14] Since the COMELEC only issued the TRO on February 13, 2014, the TRO no longer had any effect. Respondent further asserted that the TRO was addressed only to the RTC Judge, and not to the COC; therefore, the COC is not bound by the TRO. For these reasons, respondent insisted that the COC could legally issue the writ of execution pending appeal.[15]

The COC eventually issued a Writ of Execution Pending Appeal addressed to the sheriff. However, complainant only found out about respondent's manifestations when the sheriff attempted to serve the writ on him.[16] Soon thereafter, complainant filed the disbarment complaint.

In his complaint, complainant argued that respondent violated his ethical duties when he misled and induced the COC to defy lawful orders — particularly, the COMELEC's TRO and the

---

[12] See Urgent *Ex-Parte* Manifestation dated February 12, 2014 (*id*. at 70-72, pages are inadvertently misarranged); undated 2nd Urgent *Ex-Parte* Manifestation (*id*. at 75-76); 3rd Urgent Manifestation dated February 18, 2014 (*id*. at 79-80); 4th Very Urgent *Ex-Parte* Manifestation/ Rejoinder dated February 24, 2014 (*id*. at 81-84, pages are inadvertently misarranged); and 5th Very Urgent *Ex-Parte* Manifestation dated February 12, 2014 (*id*. at 85-87).

[13] See *id*. at 7.

[14] Respondent alleged that based on Administrative Circular No. 2-99 dated January 15, 1999, all RTC Executive Judges shall remain on duty on Saturday mornings. See *id*. at 72.

[15] See *id*. at 75-76, 79-80, 81-84, and 85-87.

[16] See *id*. at 6-7.

RTC's February 25, 2014 Order.[17] As a result, respondent allegedly violated Canons 1, 10, 15, and 19 of the CPR.[18]

In his answer,[19] respondent claimed that, *first,* since the case records had been transmitted to the COMELEC on January 31, 2014, the RTC was divested of jurisdiction over the case; therefore, it had no more power to issue the February 25, 2014 Order.[20] Respondent put forward the same reason for filing the five manifestations with the COC instead of the RTC Judge.[21] *Second,* the manifestations contained no misleading statements or factual deviations. He merely stated in his manifestations his honest belief that the twenty-day period had already lapsed when the COMELEC issued its TRO; hence, it no longer had any binding effect. He explained that the filing of manifestations to highlight his position did not violate any rule.[22] *Third,* he allegedly filed those manifestations pursuant to his duty under Canon 18 of the CPR to represent his client with competence and diligence.[23]

The IBP's Report and Recommendation

In a Report and Recommendation[24] dated September 1, 2014, the Investigating Commissioner recommended that respondent be suspended from the practice of law for six (6) months.[25] He observed that by filing manifestations instead of motions, respondent was able to disregard the rule that motions shall be served on the other party and shall contain a notice of hearing. In this regard, the Investigating Commissioner noted that a

---

[17] See *id*. at 8-9.

[18] See *id*. at 3-4 and 9-12.

[19] Dated June 30, 2014. *Id*. at 109-124.

[20] See *id*. at 112-113.

[21] See *id*. at 115.

[22] See *id*. at 115-119.

[23] See *id*. 119-122.

[24] *Id*. at 234-235. Signed by Commissioner Arsenio P. Adriano.

[25] *Id*. at 235.

manifestation merely informs the court about a certain matter involving the case, and does not require affirmative action by the court. In the present case, however, the manifestations filed by respondent were actually motions as these contained arguments to support his prayer for the issuance of a writ of execution pending appeal. Moreover, the Investigating Commissioner also held that respondent acted in bad faith when he convinced the COC to disregard the COMELEC's TRO. He pointed out that when the TRO enjoins the court, it includes the judge and all officers and employees of the court, including the clerk of court. Hence, respondent was unfair to the other party and employed deceit when he filed the manifestations. As a result, the other party was not afforded due process by being deprived of an opportunity to oppose the manifestations.[26]

In a Resolution[27] dated December 14, 2014, the IBP Board of Governors (IBP Board) adopted and approved the Report and Recommendation of the Investigation Commissioner.

Respondent moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated May 28, 2016.

On October 10, 2016, respondent filed a petition for review[30] before the Court purportedly pursuant to the procedure laid out in *Ramientas v. Reyala* (*Ramientas*).[31]

The Issue Before the Court

The core issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

---

[26] See *id*. at 234-235.

[27] See Notice of Resolution in Resolution No. XXI-2014-933 signed by National Secretary Nasser A. Marohomsalic; *id*. at 233, including dorsal portion.

[28] See motion for reconsideration dated October 12, 2015; *id.* at 236-251.

[29] See Notice of Resolution in Resolution No. XXII-2016-318 signed by National Secretary Patricia Ann T. Prodigalidad; *id*. at 281-282.

[30] Dated October 5, 2016. *Id.* at 287-308.

[31] 529 Phil. 128 (2006).

The Court's Ruling

I.

At the outset, the Court deems it proper to clarify that respondent's filing of the instant petition for review does not conform with the standing procedure for the investigation of administrative complaints against lawyers.

Section 12 (b) and (c) of Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 dated October 13, 2015,[32] states:

> Section 12. *Review and* ***Recommendation*** *by the Board of Governors*. —
>
> x x x x x x x x x
>
> b) After its review, the Board, by the vote of a majority of its total membership, shall **recommend** to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.
>
> c) **The Board's resolution, together with the entire records and all evidence presented and submitted**, shall be **transmitted to the Supreme Court for final action** within ten (10) days from issuance of the resolution.
>
> x x x x x x x x x
>
> (Emphases supplied)

Under the old rule, the IBP Board had the power to "issue a decision" if the lawyer complained of was either exonerated or meted a penalty of "less than suspension of disbarment." In this situation, the case would be deemed terminated unless an interested party files a petition before the Court.[33] The case of

---

[32] "Re: Amendment of Rule 139-B" dated October 13, 2015.

[33] *Vasco-Tamaray v. Daquis,* A.C. No. 10868, January 26, 2016, 782 SCRA 44, 64-65.

Ramientas,[34] which was cited as respondent's basis for filing the present petition for review, was pronounced based on the old rule.[35]

In contrast, under the amended provisions cited above, the IBP Board's resolution is merely recommendatory regardless of the penalty imposed on the lawyer. The amendment stresses the Court's authority to discipline a lawyer who transgresses his ethical duties under the CPR. Hence, any final action on a lawyer's administrative liability shall be done by the Court based on the entire records of the case, including the IBP Board's recommendation, without need for the lawyer-respondent to file any additional pleading.

On this score, respondent's filing of the present petition for review is unnecessary. Pursuant to the current rule, the IBP Board's resolution and the case records were forwarded to the Court. The latter is then bound to fully consider all documents contained therein, regardless of any further pleading filed by any party — including respondent's petition for review, which the Court shall nonetheless consider if only to completely resolve the merits of this case and determine respondent's actual administrative liability.

II.

After a judicious review of the case records, the Court agrees with the IBP that respondent should be held administratively liable for his violations of the CPR. However, the Court finds it proper to impose a lower penalty.

Canon 1 of the CPR mandates lawyers to uphold the Constitution and promote respect for the legal processes.[36]

---

[34] See *supra* note 31, at 131-136.

[35] The Court notes that even under the old rule, respondent's petition for review was an improper pleading – if not a mere surplusage – considering that the IBP Board's recommended penalty against him was not "less than suspension" and would thus not trigger the application of the then Section 12(c) of Rule 139-B of the Rules of Court.

[36] *Office of the Court Administrator v. Liangco*, 678 Phil. 305, 321 (2011).

Additionally, Canon 8 and Rule 10.03, Canon 10 of the CPR require lawyers to conduct themselves with fairness towards their professional colleagues, to observe procedural rules, and not to misuse them to defeat the ends of justice. These provisions read thus:

> CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAW OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
>
> x x x x x x x x x
>
> CANON 8 — A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.
>
> x x x x x x x x x
>
> CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.
>
> x x x x x x x x x
>
> Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Contrary to these edicts, respondent improperly filed the five (5) motions as "manifestations" to sidestep the requirement of notice of hearing for motions. In effect, he violated his professional obligations to respect and observe procedural rules, not to misuse the rules to cause injustice, and to exhibit fairness towards his professional colleagues.

The difference between a manifestation and a motion is essential in determining respondent's administrative liability.

A manifestation is usually made merely for the information of the court, unless otherwise indicated. In a manifestation, the manifesting party makes a statement to inform the court, rather than to contest or argue.[37] In contrast, a motion is an

---

[37] See *Neri v. de la Peña*, 497 Phil. 73, 81 (2005).

application for relief from the court other than by a pleading[38] and must be accompanied by a notice of hearing and proof of service to the other party, unless the motion is not prejudicial to the rights of the adverse party.[39] Settled is the rule that a motion without notice of hearing is *pro forma* or a mere scrap of paper; thus, the court has no reason to consider it and the clerk has no right to receive it. The reason for the rule is simple: to afford an opportunity for the other party to agree or object to the motion before the court resolves it. This is in keeping with the principle of due process.[40]

In the present case, respondent filed five (5) manifestations before the COC praying for affirmative reliefs. The Court agrees with the IBP that these "manifestations" were in fact motions, since reliefs were prayed for from the court — particularly, the issuance of the writ of execution pending appeal. By labelling them as manifestations, respondent craftily sidestepped the requirement of a notice of hearing and deprived the other party of an opportunity to oppose his arguments. Moreover, the fact that he submitted these manifestations directly to COC, instead of properly filing them before the RTC, highlights his failure to exhibit fairness towards the other party by keeping the latter completely unaware of his manifestations. Undoubtedly, respondent violated his professional obligations under the CPR.

He attempts to justify his acts by arguing that he merely represented his client with competence and diligence. However, respondent should be reminded that a lawyer is ethically bound

---

[38] RULES OF COURT, Rule 15, Sec. 1.

[39] RULES OF COURT, Rule 15, Sec. 4.

[40] See *Boiser v. Aguirre, Jr.*, 497 Phil. 728, 734-735 (2005); and *Neri v. dela Peña*, *supra* note 36, at 80-81. In *Boiser v. Aguirre*, a judge was found administratively liable for gross ignorance of the law for granting a motion filed without the requisite notice of hearing and proof of service. In *Neri v. dela Peña*, a judge was found liable for acting on an *ex parte* manifestation and basing his decision on it while the other party was completely unaware of the manifestation's existence. The Court held that the judge's act seriously ran afoul of the precepts of fair play.

not only to serve his client but also the court, his colleagues, and society. His obligation to represent his client is not without limits, but must be "within the bounds of the law" pursuant to Canon 19 of the CPR. Accordingly, he is ethically bound to employ only fair and honest means to attain their clients' objectives.

Respondent further argues that his filing of the manifestations with the COC is justified considering that the RTC had already lost jurisdiction over the case and the COC had the ministerial duty to issue the writ of execution. His argument fails to persuade. The Court has ruled that a COC has a ministerial duty to issue a writ of execution when the judge directs its issuance.[41] In this case, however, the RTC Judge had issued the second Order (dated February 25, 2014) explicitly directing the COC "NOT TO ISSUE a Writ of Execution." Therefore, the COC in this case did not have a ministerial duty to issue the writ of execution. If respondent honestly believed that his client was entitled to the writ, then he should not have clandestinely submitted *ex parte* manifestations directly to the COC to coerce the latter to grant his intended relief. Instead, respondent should have filed the proper motions before the court, which alone has the inherent power to grant his prayer pursuant to Section 5 (c), (d), and (g), Rule 135 of the Rules of Court.[42]

---

[41] See *City of Naga v. Asuncion*, 579 Phil. 781, 801-802 (2008).

[42] Section 5 (c), (d), and (g), Rule 135 of the Rules of Court provide:

Section 5. *Inherent powers of courts.* – Every court shall have power:

x x x x x x x x x

(c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;

(d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;

x x x x x x x x x

(g) To amend and control its process and orders so as to make them conformable to law and justice;

x x x x x x x x x

The Court has the plenary power to discipline erring lawyers. In the exercise of its sound judicial discretion, it may to impose a less severe punishment if such penalty would achieve the desired end of reforming the errant lawyer.[43] In light of the foregoing discussion, the Court deems that a penalty of suspension from the practice of law for three (3) months is sufficient and commensurate with respondent's infractions.[44]

As a final note, the Court stresses that a lawyer's primary duty is to assist the courts in the administration of justice. Any conduct that tends to delay, impede, or obstruct the administration of justice contravenes this obligation.[45] Indeed, a lawyer must champion his client's cause with competence and diligence, but he cannot invoke this as an excuse for his failure to exhibit courtesy and fairness to his fellow lawyers and to respect legal processes designed to afford due process to all stakeholders.

WHEREFORE, respondent Atty. Rolando V. Zubiri (respondent) is found **GUILTY** of violating Canon 1, Canon 8, and Rule 10.03, Canon 10 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for three (3) months effective from the finality of this Decision, and is **STERNLY WARNED** that a repetition of the same or similar act shall be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be attached to respondent's personal record as a member of the Bar. Furthermore, let copies of the same be served on the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

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

---

[43] See *Foronda v. Alvarez, Jr.*, 737 Phil. 1, 13 (2014).

[44] See *Ramos v. Pallugna*, 484 Phil. 184, 193 (2004).

[45] *Teodoro III v. Gonzales*, 702 Phil. 422, 431 (2013).

FIRST DIVISION

[A.M. No. P-17-3709. June 19, 2017]
(Formerly OCA IPI No. 13-4058-P)

JUDGE CELSO O. BAGUIO, *complainant, vs.* **JOCELYN P. LACUNA, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 34, GAPAN CITY, NUEVA ECIJA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT STENOGRAPHERS; DUTY TO TRANSCRIBE THEIR NOTES AND ATTACH THE TRANSCRIPTS TO THE RECORD OF THE CASE WITHIN (20) DAYS FROM THE TIME THEY WERE TAKEN; VIOLATION THEREOF CONSTITUTES SIMPLE NEGLECT OF DUTY.— The duties of a Stenographer are clearly embodied under Section 17, Rule 136 of the Rules of Court, x x x [thus,] stenographers are enjoined to immediately deliver to the clerk of court all the notes taken during the session of the court, which are to be attached to the record of the case. In this regard, Supreme Court Administrative Circular No. 24-90 requires stenographers to transcribe their notes and attach the transcripts to the record of the case within a period of twenty (20) days from the time they were taken. x x x Under the circumstances, [respondent's] failure to timely transcribe the stenographic notes was correctly found by the Executive Judge to constitute simple neglect of duty, which is defined as a disregard of, or a failure to give proper attention to a task expected of an employee, simple neglect of duty signifies carelessness or indifference.

2. ID.; ID.; ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR.— Section 46 (D) of Rule 10 of the Revised Rules on Administrative Cases in the Civil Service provides that simple neglect of duty is categorized as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. While the Court is duty bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, the Court also has the discretion

to temper the harshness of its judgment with mercy. Thus, in several administrative cases, the Court has restrained from imposing the actual penalties in the presence of mitigating facts, such as, length of service in the judiciary, the acknowledgment of infractions and feelings of remorse, and family circumstances, among others. In this case, apart from respondent's long service in the government, it has been observed during the administrative investigation, and as admitted by complainant, that the latter's working habits had greatly improved and had since complied with her duties. Accordingly, the Court finds the imposable penalty of three (3) months suspension without pay, instead of the six (6) months penalty recommended by the Executive Judge, to be more fair and reasonable under the circumstances.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative matter stemmed from a letter-complaint[1] filed by Judge Celso O. Baguio (Judge Baguio), Presiding Judge of the Regional Trial Court, Branch 34, Gapan City, Nueva Ecija (RTC), charging respondent Jocelyn P. Lacuna (respondent), Stenographer III of the same court, with gross incompetence.

In his letter-complaint, Judge Baguio alleged that on January 25, 2013, the RTC had to reset the scheduled initial trial of Criminal Case No. 14405-10, entitled *People of the Philippines v. Jason Ondrade*, for failure of respondent to transcribe and submit the stenographic notes of the pre-trial proceedings held on November 16, 2012. As a result, she was directed to immediately transcribe the same in an Order[2] dated January 25, 2013, and ordered to submit a written explanation why she should not be held administratively liable for her failure to perform her job in accordance with the rules.[3] While respondent

---

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

[2] *Id*. at 3.

[3] *Id*. at 1.

apologized for her incompetence in a letter[4] dated January 28, 2013, she nonetheless claimed that the resetting of the case was not solely due to her failure to perform her task but also in view of the absence of the witness for the prosecution. Judge Baguio further claimed that despite having been previously suspended for a similar offense in A.M. No. P-11-2933 (formerly OCA IPI No. 07-2674-P),[5] respondent did not improve, and that her proficiency as stenographer was doubtful given that she relied solely on tape recordings for the past fifteen (15) years. He pointed out that the incident complained of was just one of the many similar incidents involving respondent's dismal failure to perform her tasks, which resulted in the cancellation of hearings and caused embarrassment to the court. Nevertheless, Judge Baguio remarked that respondent has an almost perfect attendance and that she behaved well in court although she mostly tended to keep to herself and was always very quiet.[6]

In the 1st Indorsement[7] dated March 4, 2013 issued by the Office of the Court Administrator (OCA), respondent was directed to comment on the letter-complaint dated January 28, 2013.

In her Comment[8] dated April 15, 2013, respondent admitted having failed to transcribe the stenographic notes of the pre-trial held on November 16, 2012. However, she contended that her omission was not due to her gross inefficiency but rather, due to simple oversight or inadvertence on her part. She explicated that the court regularly scheduled hearings three (3) times a week, with the bulk of the criminal cases heard every Tuesday and Friday, and that the date complained of was a Friday, during which there were many criminal cases scheduled for hearing at that time. She added that there were only three (3)

---

[4] *Id*. at 4.

[5] "A.M. No. P-22-2933" in OCA's Report and Recommendation dated September 11, 2015. See *id*. at 8.

[6] *Id*. at 2.

[7] *Id*. at 5.

[8] *Id*. at 6-6-A.

stenographers in Branch 34 and each of them took turns in their duty at least once a week, transcribing not only stenographic notes of pre-trial and trials, but also encoded orders of the court. She clarified that her apology should not be viewed as an admission of her incompetence, and further denied that she solely relied on tape recordings. Likewise, she contended that her regular attendance was a manifestation of her enthusiasm to not only cope with her work load but also her willingness to improve in the performance of her official functions. Accordingly, she prayed that the complaint be dismissed or if found guilty, that her penalty be mitigated.[9]

On September 11, 2015, the OCA recommended that the administrative complaint be referred to the Executive Judge of the RTC of Cabanatuan City, Nueva Ecija for investigation, report and recommendation.[10]

In a Report and Recommendation[11] dated March 2, 2017, Executive Judge Ana Marie C. Joson-Viterbo recommended that respondent be meted the penalty of six (6) months suspension without pay, having been found guilty only of simple neglect of duty.[12] The Executive Judge noted that respondent admittedly failed to timely transcribe half of her stenographic notes within the period prescribed prior to January 25, 2013 (the date of the incident complained of) but nonetheless completed the same before the next scheduled hearing of the cases, and that the primary cause for the delay was her slow performance despite her noticeable hard work. Since the investigation showed that respondent has significantly improved, and in fact, exerted efforts to fulfill her duties within the prescribed time, the Executive Judge found respondent not to have acted in bad faith and therefore guilty of simple neglect of duty only. Accordingly, the Executive Judge recommended the penalty of six (6) months

---

[9] *Id*.

[10] *Id*. at 7-9. See also Resolution dated November 10, 2015; *id*. at 10.

[11] *Id*. at 49-53.

[12] *Id*. at 53.

suspension without pay after considering her previous infraction for a similar offense,[13] the twenty-one (21) years of public service, and complainant's admission that her working habits had greatly improved.[14]

The Issue Before the Court

The sole issue in this case is whether or not respondent should be held administratively liable for simple neglect of duty.

The Court's Ruling

The Court finds the Executive Judge's recommendation to be in accord with the law and the facts of the case and thus, adopts and approves the same except as to the imposable penalty.

The duties of a Stenographer are clearly embodied under Section 17, Rule 136 of the Rules of Court, to wit:

> **SEC. 17**. *Stenographer*. — It shall be the **duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case**; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case. (Emphasis supplied)
>
> x x x x x x x x x

Under the afore-cited provision, stenographers are enjoined to immediately deliver to the clerk of court all the notes taken during the session of the court, which are to be attached to the record of the case. In this regard, Supreme Court Administrative Circular No. 24-90[15] requires stenographers to transcribe their

---

[13] See *id*. at 8.

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

[15] Entitled "REVISED RULES ON TRANSCRIPTION OF STENOGRAPHIC NOTES AND THEIR TRANSMISSION TO APPELLATE COURTS," (August 1, 1990).

notes and attach the transcripts to the record of the case within a period of twenty (20) days from the time they were taken, thus:

> 2. (a) All stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken.

In the case at bar, it is undisputed that respondent failed to comply with the twenty (20) day period in the transcription of the stenographic notes for the Pre-Trial in Criminal Case No. 14405-10, and hence, guilty of violating Supreme Court Administrative Circular No. 24-90. The heavy work load proffered by respondent in her attempt to be exonerated from liability is not an adequate excuse for her to be remiss in the performance of her duties. To allow otherwise would permit every government employee charged with negligence and dereliction of duty to resort to the same convenient excuse to evade punishment.[16]

It bears stressing that a court stenographer performs a function essential to the prompt and fair administration of justice. The conduct of every person connected with the administration of justice, from the presiding judge to the lowliest clerk, is circumscribed with a heavy burden of responsibility. All public officers are accountable to the people at all time and must perform their duties and responsibilities with utmost efficiency and competence.[17] As administration of justice is a sacred task, the Court condemns any omission or act which would erode public faith in the judiciary.[18] A public office is a public trust, and a court stenographer, without doubt, violates this trust by failing to fulfill his duties.[19]

While respondent admitted to incurring delay in the performance of her duties, records show that she nonetheless

---

[16] *Alcover, Sr. v. Bacatan*, 513 Phil. 77, 82 (2005).

[17] *Seangio v. Parce*, 553 Phil. 697, 709-710 (2007).

[18] *Banzon v. Hechanova*, 574 Phil. 13, 18-19 (2008).

[19] *Office of the Court Administrator v. Montalla*, 540 Phil. 343, 348 (2006).

completed the same in time for the calendar of cases. Under the circumstances, her failure to timely transcribe the stenographic notes was correctly found by the Executive Judge to constitute simple neglect of duty, which is defined as a disregard of, or a failure to give proper attention to a task expected of an employee, simple neglect of duty signifies carelessness or indifference.[20]

Section 46 (D) of Rule 10 of the Revised Rules on Administrative Cases in the Civil Service[21] provides that simple neglect of duty is categorized as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. While the Court is duty bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, the Court also has the discretion to temper the harshness of its judgment with mercy.[22] Thus, in several administrative cases, the Court has restrained from imposing the actual penalties in the presence of mitigating facts, such as, length of service in the judiciary, the acknowledgment of infractions and feelings of remorse, and family circumstances, among others.[23] In this case, apart from respondent's long service in the government, it has been observed during the administrative investigation, and as admitted by complainant, that the latter's working habits had greatly improved and had since complied with her duties.[24]

Accordingly, the Court finds the imposable penalty of three (3) months suspension without pay, instead of the six (6) months penalty recommended by the Executive Judge, to be more fair and reasonable under the circumstances. It is noteworthy to

---

[20] *Supra* note 15, at 710.

[21] Promulgated on November 8, 2011.

[22] *Cabigao v. Nery*, 719 Phil. 475, 484 (2013).

[23] *Marquez v. Pacariem*, 589 Phil. 72, 89 (2008).

[24] See Transcript of Stenographic Notes dated January 16, 2017; *rollo*, p. 27.

point out that where a penalty less punitive would suffice, whatever missteps may be committed by the employee ought not to be visited with a consequence so severe.[25]

WHEREFORE, the Court finds respondent Jocelyn P. Lacuna **GUILTY** of simple neglect of duty. She is hereby **SUSPENDED** for a period of three (3) months without pay and **STERNLY WARNED** to be more circumspect in the performance of her duties, as a repetition of the same or similar offense shall be dealt with more severely. Let a copy of this Decision be entered in the 201 file of respondent Jocelyn P. Lacuna.

SO ORDERED.

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

FIRST DIVISION

[OCA IPI No. 11-3800-RTJ. June 19, 2017]

OSCAR C. RIZALADO, *complainant, vs.* **PRESIDING JUDGE GIL G. BOLLOZOS, REGIONAL TRIAL COURT, BR. 21, CAGAYAN DE ORO CITY, MISAMIS ORIENTAL**, *respondent.*

[OCA IPI No. 12-3867-RTJ. June 19, 2017]

RE: LETTER-COMPLAINT DATED JUNE 27, 2011 OF OSCAR C. RIZALADO AGAINST JUDGE GIL BOLLOZOS, REGIONAL TRIAL COURT, BRANCH 21, CAGAYAN DE ORO CITY, RELATIVE TO G.R.

---

[25] See Minute Resolution in *Nuezca v. Verceles*, A.M. No. P-14-3228, July 9, 2014.

NO. 188427 (CYNTHIA G. ESPANO, *ET AL. v.* DR. OTHELLO C. GUZMAN, *ET AL.*).

[OCA IPI No. 12-3897-RTJ. June 19, 2017]

OTHELLO C. GUZMAN, RICARDO GUZMAN, MARIO C. GUZMAN, SR., AND ROSARIO GUZMAN RIZALADO, *complainants, vs.* **PRESIDING JUDGE GIL G. BOLLOZOS**, **REGIONAL TRIAL COURT, BRANCH 21, CAGAYAN DE ORO CITY, MISAMIS ORIENTAL,** *respondent.*

[OCA IPI No. 13-4070-RTJ. June 19, 2017]

OSCAR C. RIZALADO, *complainant, vs.* **PRESIDING JUDGE GIL G. BOLLOZOS**, **REGIONAL TRIAL COURT, BRANCH 21, CAGAYAN DE ORO CITY, MISAMIS ORIENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; CLEAR AND CONVINCING EVIDENCE ARE REQUIRED TO PROVE THE CHARGE OF BIAS AND PARTIALITY.— It is well-settled that "in administrative proceedings, the burden of proof that respondents committed the acts complained of rests on the complainant. x x x. Bare allegations of bias and partiality are not enough in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. There should be clear and convincing evidence to prove the charge of bias and partiality. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself."

2. ID.; ID.; ID.; ADMINISTRATIVE COMPLAINT IS NOT THE PROPER REMEDY FOR THE CORRECTION OF ACTIONS OF A JUDGE PERCEIVED TO HAVE GONE BEYOND THE NORMS OF PROPRIETY, WHERE A SUFFICIENT JUDICIAL REMEDY EXISTS.— "[T]he filing of an administrative complaint is not the proper remedy for

the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists." "The law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The *ordinary remedies* against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The *extraordinary remedies* against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc.*) are [, *inter alia,*] the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be." Relative thereto, "disciplinary proceedings and criminal actions against judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed."

3. ID.; ID.; ID.; ADMINISTRATIVE SANCTIONS AGAINST THE ERRING JUDGE ONLY WHERE THE ERROR IS SO GROSS, DELIBERATE AND MALICIOUS OR INCURRED WITH EVIDENT BAD FAITH.— [R]espondent is legally clothed with judicial discretion in the disposition of cases, which involves the exercise of judgment. As a judge, he must be allowed reasonable latitude for the operation of his own individual view of the case, his appreciation of the facts, and his understanding of the applicable law on the matter. "To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, would be nothing short of harassment and would make his position doubly unbearable. To hold otherwise would be to render judicial office untenable, for no one called upon to try facts or interpret the law in the process of administering justice can be infallible in

his judgment. It is only where the error is so gross, deliberate and malicious, or incurred with evident bad faith that administrative sanctions may be imposed against the erring judge."

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution are four (4) administrative cases filed against respondent Presiding Judge Gil G. Bollozos (respondent), namely: (*a*) OCA IPI Nos. 11-3800-RTJ,[1] 12-3867-RTJ,[2] and 13-4070-RTJ,[3] all initiated by complainant Oscar C. Rizalado (Rizalado) alleging undue delay in the disposition of the case, partiality, and gross ignorance of the rules, and (*b*) OCA IPI No. 12-3897-RTJ[4] filed by complainants Othello C. Guzman[5] (Othello), Ricardo Guzman, Mario C. Guzman, Sr., and Rosario Guzman Rizalado (Guzman, *et al.*) for gross ignorance of the law, undue delay in the administration of justice, and bias.

The Facts

These consolidated cases are all related to **G.R. No. 188427,** entitled "*Cynthia G. Espano, et al. v. Dr. Othelo Ch. Guzman, et al.*," where the Court, in a Resolution[6] dated March 24, 2010, affirmed the Decision[7] dated September 2, 2008 and

---

[1] *Rollo* (OCA IPI No. 11-3800-RTJ), pp. 1-3.

[2] *Rollo* (OCA IPI No. 12-3867-RTJ), pp. 33-34.

[3] *Rollo* (OCA IPI No. 13-4070-RTJ), pp. 2-3.

[4] *Rollo* (OCA IPI No. 12-3897-RTJ), pp. 1-3.

[5] "Othello Ch. Guzman," "Othelo," or "Othelo Ch. Guzman" in some parts of the records.

[6] See Entry of Judgment dated September 14, 2010 signed by Deputy Clerk of Court and Chief Judicial Records Officer Ma. Lourdes C. Perfecto; *rollo* (OCA IPI No. 12-3897-RTJ), p. 33.

[7] *Id*. at 6-31. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Edgardo A. Camello and Mario V. Lopez concurring.

Resolution[8] dated May 29, 2009 rendered by the Court of Appeals (CA) in **CA-G.R. CV No. 80347-MIN,** entitled "*Dr. Othelo Ch. Guzman, et al. v. Cynthia G. Espano, et al.*"

The said case originated from **Civil Case No. 92-368** for Quieting of Title, Declaration of Documents as Null and Void, Partition, Accounting and Damages with Preliminary Injunction, and **Civil Case No. 92-409** for Annulment of Lease Contracts and Damages with a Writ of Preliminary Mandatory Injunction, which the Regional Trial Court of Cagayan de Oro City, Branch 21 (RTC) resolved on February 13, 2003.[9] In its September 2, 2008 Decision, the CA affirmed with modification the RTC's ruling and ordered, *inter alia,* defendant therein, Reuben Guzman (Reuben), to reimburse Guzman, *et al.* whatever rentals he had received pertaining to their shares in a specific property and to make an accounting of all the rentals received by him and the former administrator.[10]

The Court's Resolution in **G.R. No. 188427** became final and executory on September 14, 2010.[11] Thus, Guzman, *et al*., through their counsel of record, Atty. Ismael S. Laya (Atty. Laya), filed a Motion for Execution[12] of the judgment before the RTC. In a Joint Order[13] dated July 14, 2011 (**July 14, 2011 Joint Order**), respondent ordered Guzman, *et al.,* to make an accounting of all monies and properties under litigation.[14]

---

[8] Not attached to the *rollos*.

[9] See CA Decision dated September 2, 2008, *rollo* (OCA IPI No. 12-3897-RTJ), p. 7.

[10] The pertinent portion of the *fallo* reads:

> 3. Reuben Guzman is hereby ordered to reimburse plaintiffs-appellants whatever rentals that he had received pertaining to the shares of plaintiffs-appellants and to make an accounting of all the rentals received by Fernando, Jr. during his administration, that is from July 2, 1980 until July 23, 1990 as well as during his administration, that is from July 24, 1990 to the present. (*Id*. at 30.)

[11] See Entry of Judgment; *id*. at 33.

[12] Dated April 5, 2011. *Rollo* (OCA IPI No. 11-3800-RTJ), pp. 8-10.

[13] *Id*. at 11-13.

[14] See *id*. at 13.

OCA IPI No. 11-3800-RTJ

In a complaint[15] dated **November 14, 2011**, Rizalado, who claimed to be the attorney-in-fact of Guzman, *et al.*, alleged that respondent failed to act on the motion for execution within a considerable amount of time. He also averred that respondent's July 14, 2011 Joint Order was inconsistent with the CA Decision and was intended to delay the execution of the judgment to favor Reuben.[16]

Moreover, Rizalado disputed the Comment[17] of Atty. Jerlie P. Luis-Requerme (Atty. Requerme), Clerk of Court of the RTC, which stated that there was no proof of the alleged official receipts (ORs) of monies deposited with the Office of the Clerk of Court of the RTC (OCC-RTC) as rental payments, since the parties required to deposit failed to comply with the court's order to submit the corresponding ORs for monitoring.[18] Rizalado asserted that the parties should not be required to submit their copies of the ORs to the OCC-RTC, insisting that the latter should have duplicate copies, especially since the summary of payments and withdrawals[19] for Civil Case Nos. 92-368 and 92-409 from July 13, 1992 to July 13, 2011 showed that the accounting was monitored and conducted by Atty. Requerme. He also challenged Atty. Requerme's recommendation for the appointment of a commissioner to conduct the said accounting. Further, Rizalado lamented that when Guzman, *et al*. attempted to withdraw the rental deposits for the period from 1992 to 2011 from the OCC-RTC, they were refused.[20]

In defense,[21] respondent claimed that he resolved Guzman, *et al.*'s motion for execution through the issuance of the July

---

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

[16] See *id*. at 1.

[17] Dated September 20, 2011. *Id*. at 18.

[18] See *id*.

[19] See Accounting of Rentals for Civil Cases 92-368 and 92-409 from 1992 to 2011; *id*. at 19-27.

[20] See *id*. at 1-2.

[21] See Comment dated January 27, 2012; *id*. at 71-90.

14, 2011 Joint Order and that he gave the judgment defendants an opportunity to comment on the said motion. He also stated that prior to the filing of Guzman, *et al.*'s motion for execution through Atty. Laya, a motion to withdraw deposits and to compel lessees to pay unpaid rentals[22] (motion to withdraw deposits) had been filed by Atty. Leonardo N. Demecillo (Atty. Demecillo), who also appeared as counsel for them.[23] In an Order[24] dated January 31, 2011 (**January 31, 2011 Order**), respondent held in abeyance the resolution of the latter motion as the records of the case were still with the Court.

Thereafter, Rizalado himself, who also claimed to represent Guzman, *et al.*, filed another motion for execution.[25] Respondent then directed[26] Guzman, *et al.* to manifest who was truly representing them, prompting Atty. Demecillo and Rizalado to withdraw their motions. Subsequently, respondent issued the aforesaid July 14, 2011 Joint Order. He posited that any delay in the execution of the judgment, therefore, could be attributed to the multiple motions filed by Guzman, *et al.*'s counsels.[27]

Furthermore, respondent claimed that there were legal issues to be resolved before he could order the release of the monies and compel the lessees to pay their unpaid rentals. He explained that the accounting submitted by the parties, the report of the OCC-RTC, and the withdrawals of the monies all had to be first validated. He also averred that the ORs evidencing the deposits of the rentals to the OCC-RTC could not be found,

---

[22] See Motion to Withdraw Deposits and to Compel Lessees Combing Ang, Spouses Teodoro C. Ambal and Maria Socorro Ambal, Antonio Go, Adela Yee to Pay Their Unpaid Rentals dated December 7, 2010; *rollo* (OCA IPI No. 12-3867-RTJ), pp. 37-43.

[23] See *rollo* (OCA IPI No. 11-3800-RTJ), pp. 75-80.

[24] *Rollo* (OCA IPI No. 12-3867-RTJ), p. 44.

[25] Dated May 17, 2011. *Rollo* (OCA IPI No. 11-3800-RTJ), pp. 138-142.

[26] See Order dated May 17, 2011; *id.* at 191-192.

[27] See *id.* at 75-89.

and that the parties did not object when they were required to make an accounting. Moreover, records do not disclose that estate taxes had been paid to warrant the distribution of the estate. As such, pending compliance as to the nomination of an administrator and an accountant, he granted the motion for execution filed by Atty. Laya in his Joint Order[28] dated December 5, 2011 (December 5, 2011 Joint Order).[29]

Likewise, respondent asseverated that Rizalado had no legal personality to file the instant administrative complaint, as he is no longer the attorney-in-fact of Guzman, *et al.* Respondent also claimed to have undergone medical treatment after suffering a heart attack that necessitated an extended leave, after which, he resolved all pending incidents.[30] Finally, respondent stressed on Rizalado's propensity to file unwarranted complaints against judges, defying the Court's earlier warning[31] against the same.[32]

Subsequently, Rizalado filed another **complaint**[33] **dated April 2, 2012** against respondent, alleging once again that the July

---

[28] *Id.* at 174-180.

[29] See *id.* at 75-89.

[30] See *id.* at 75 and 89.

[31] *Othello Ch. Guzman, et al. v. Judge Arcadio D. Fabria*, A.M. OCA IPI No. 04-1996-RTJ [dismissed by the Court in a Resolution dated June 9, 2004 for lack of merit] (*id.* at 102); *Oscar Rizalado v. Executive Judge Edgardo T. Lloren*, A.M. OCA IPI No. 05-2362-RTJ [dismissed by the Court in a Resolution dated June 19, 2006 for lack of merit] (*id.* at 105-109); and *Othello Ch. Guzman, et al. v. Executive Judge Edgardo T. Lloren*, A.M. OCA IPI No. 06-2435-RTJ [dismissed by the Court on December 4, 2006. Complainant was found guilty of contempt of court and meted with a fine of ₱2,000.00 with stern warning that a repetition of the same offense shall be dealt with more severely. Warrant of arrest was issued against complainant Rizalado when he refused to pay the fine. Subsequently, the Court issued another resolution dismissing another complaint dated February 9 filed by Rizalado for being moot], (see *id.* at 110-115 and 116-117; see also Resolution and Warrant of Arrest both dated April 22, 2009 issued by the Court, *rollo* [OCA IPI No. 06-2435-RTJ], pp. 259-260 and 261-263, respectively).

[32] See *rollo*, (OCA IPI No. 11-3800-RTJ), p. 90.

[33] *Id.* at 273-275.

14, 2011 Joint Order which the latter had earlier issued was an amendment of the judgment sought to be executed. He also averred that the nomination of another administrator and/or accountant as ordered by respondent was also tantamount to an alteration of the judgment, to which Guzman, *et al.,* as the prevailing party, were not amenable. Respondent filed his comment[34] thereto on July 4, 2012.

OCA IPI No. 12-3867-RTJ

In a subsequent letter-complaint[35] dated **June 27, 2011**, Rizalado questioned the January 31, 2011 Order issued by respondent, which held in abeyance the resolution of the motion to withdraw deposits previously filed by Atty. Demecillo. Rizalado claimed that the issuance thereof was "anomalous," considering that the execution of the judgment in Civil Case Nos. 92-368 and 92-409 has been put on hold for five (5) months. Hence, he ascribes ignorance of the Rules of Court, specifically Section 1, Rule 39 thereof, upon respondent.[36]

In his Comment[37] thereto, respondent pointed out that Rizalado had already filed a complaint against him dated November 14, 2011, docketed as ***OCA IPI No. 11-3800-RTJ*****,** to which he had already submitted his comment. He explained that all the administrative complaints against him referred to Civil Case Nos. 92-368 and 92-409, which the Court had already resolved in G.R. No. 188427. Having already submitted his comment to the earlier complaints filed by Rizalado, he therefore adopted the same.[38]

OCA IPI No. 12-3897-RTJ

In another complaint[39] dated **May 7, 2012**, this time initiated by Guzman, *et al.*, they alleged, among others, that respondent

---

[34] Dated June 29, 2012. *Id*. at 356-372.

[35] *Rollo* (OCA IPI No. 12-3867-RTJ), pp. 33-34.

[36] See *id.*

[37] Dated November 6, 2013. *Id*. at 133-241.

[38] See *id*. at 133-135.

[39] *Rollo* (OCA IPI No. 12-3897-RTJ), pp. 1-4.

has been delaying the execution of the judgment in their favor and "protecting" the opposing party's counsel, Atty. Andrew Barba (Atty. Barba) by refusing to hold the latter in contempt despite the various motions filed by him opposing their motion for execution. Likewise, they argued that Reuben should be held in contempt for failing to comply with respondent's orders. Moreover, their request for respondent to update the rental payments of all tenants as well as to release the same from the OCC-RTC in their favor remained unresolved. Furthermore, they claimed that respondent's order for them to pay estate tax was premature, as most of the tenants have not updated their rental payments.[40]

In his comment[41] dated August 24, 2012, respondent denied that he was protecting Atty. Barba, as well as Reuben, arguing that if Guzman, *et al*. found their acts contemptuous, they should have filed a proper motion to cite Atty. Barba and Reuben in contempt.[42] As regards the request for updated rental payments, respondent claimed that there was no motion filed by Guzman, *et al.* requesting the same and instead, asserted that it could be done through the appointment of an administrator.[43] With respect to respondent's order for the payment of estate tax, he averred that it would be premature to release the rentals unless it is certified that estate taxes have been paid.[44]

Moreover, respondent reiterated that he had already granted Guzman, *et al.*'s motion for the issuance of a writ of execution through his December 5, 2011 Joint Order. Praying for the dismissal of the complaint, he argued that it was filed solely to harass him and to compel the release of rental deposits without compliance with his directive to ensure the authenticity and

---

[40] See *id*. at 1-2.

[41] *Id*. at 212-250.

[42] See *id*. at 236-237 and 239.

[43] See *id*. at 237-239.

[44] See *id*. at 239.

veracity of Guzman, *et al.*'s claim.[45] He also prayed for the consolidation of the administrative complaints filed against him and for his comments in the earlier complaints to be deemed part of his comment in the present complaint.[46]

OCA IPI No. 13-4070-RTJ

Finally, in a letter-complaint[47] dated **April 17, 2013**, Rizalado alleged that despite the finality of the decision in Civil Case Nos. 92-368 and 92-409, respondent still failed to implement the same. Rizalado insinuated that Reuben bribed Atty. Laya and respondent to delay the execution of the judgment. He claimed that Atty. Laya intentionally altered the date in the motion for execution and made it appear as "July 24, 1990" instead of "July 2, 1980" to deceive Guzman, *et al.* He also reiterated his allegations in a previous complaint that despite Reuben's failure to comply with respondent's order to submit an accounting, respondent has never cited him in contempt.[48]

Rizalado also asserted that respondent allowed Atty. Barba to file pleadings despite the finality of the judgment. He maintained that the motion to withdraw deposits previously filed by Atty. Demecillo had been denied by respondent, in contravention of the Court's final order. Questioning the appointment of a commissioner, he averred that it was intended to conceal anomalies committed by respondent.[49]

In his Comment,[50] respondent denied any knowledge of the alleged bribery perpetrated by Reuben and of the alteration of dates in the motion for execution as well as the writ of execution. He insisted that the delay in the implementation of the writ was caused by Guzman, *et al.* for their refusal to assist the

---

[45] See *id*. at 250.

[46] See *id*. at 212.

[47] *Rollo* (OCA IPI No. 13-4070-RTJ), pp. 2-3.

[48] See *id*.

[49] See *id*.

[50] Dated August 30, 2013. *Id*. at 100-131.

branch sheriff to locate the whereabouts of Reuben, for which reason the writ remained unserved.[51]

Further, he explained that the July 24, 2011 Joint Order merely directed Atty. Laya to submit an accounting of all the monies that were deposited with the OCC-RTC in view of the absence of ORs on file. With regard to his failure to hold Reuben in contempt of court, he averred that the matter can only be tackled after the writ of execution had been served and the appropriate motion had been filed in court. As regards Atty. Barba's filing of various other pleadings, respondent asserted that he cannot prevent the former from doing so in defense of his client.[52]

Finally, respondent repeated that the appointment of a commissioner was necessary for the accounting of the rental funds before any withdrawal could be had.[53]

Other Undocketed Complaints Against Respondent

Aside from the foregoing complaints, Rizalado filed several other letter-complaints[54] against respondent before the Office

---

[51] See *id*. at 103-105.

[52] See *id*. at 105-122.

[53] See *id*. at 122-124.

[54] (*a*) Letter-complaint dated July 1, 2013 alleging that, in a Resolution dated March 21, 2012, the Court resolved to consider their letter-complaint dated June 27, 2011 as an administrative complaint against respondent for gross ignorance of the law, that respondent failed to comment on their Complaint dated November 15, 2011 charging the latter with delay in the disposition of cases and partiality, and that respondent failed to act on their motion for execution promptly (*id*. at 49-50); (*b*) Letter dated July 18, 2013 alleging, among others, that respondent should be investigated for the illegal orders he issued involving the rental funds deposited in the OCC-RTC (*id*. at 63-64); (*c*) Complaint dated May 30, 2014 addressed to then Department of Justice (DOJ) Secretary Leila De Lima charging respondent with gross ignorance of the Rules of Court relative to the execution of judgment in Civil Case Nos. 92-368 and 92-409 (*id*. at 133-137); (*d*) Complaint dated August 15, 2014 raising the same issues of delay in the disposition of cases and violation of Rules of Court, and questioning the July 14, 2011 Joint Order (*rollo* [OCA IPI No. 12-3867-RTJ], pp. 248-252); (*e*) Complaint dated

of the Court Administrator (OCA), all related to respondent's alleged inaction and undue delay in the execution of the final and executory judgment in Civil Case Nos. 92-368 and 92-409.

The Report and Recommendation of the OCA

In a Memorandum[55] dated December 12, 2016, the OCA recommended that: (*a*) the consolidated administrative complaints against respondent be dismissed for raising issues that are judicial in nature and for lack of merit; (*b*) Rizalado be found guilty of contempt of court and ordered imprisoned for a period of five (5) days and to pay the fine in the amount of ₱5,000.00, with a stern warning that a repetition of the same shall be dealt with more severely; and (*c*) that the National Bureau of Investigation (NBI) be directed to immediately cause the arrest and confinement of Rizalado to serve his imprisonment.[56]

In its evaluation of the consolidated cases, the OCA noted that the charges against respondent all pertain to his issuance of the January 31, 2011 Order and July 14, 2011 Joint Order, which Rizalado and Guzman, *et al*. claim to be anomalous and irregular. The OCA posited, however, that if such had been their belief, they should have availed of the remedies provided under the Rules of Court, which they unfortunately failed to do. The OCA opined that by questioning the manner by which respondent had acted on the case filed before him, complainants are in effect infringing on the exercise of his judicial discretion, an act that is beyond the ambit of an administrative inquiry or disquisition.[57]

November 7, 2015 addressed to Chief Justice Maria Lourdes P. A. Sereno, reiterating his allegations questioning the aforesaid Joint Order issued by respondent (*rollo* [OCA IPI No. 13-4070-RTJ], pp. 187-190); and (*f*) Letter-Complaint dated March 2, 2016 alleging the failure of respondent to issue a writ of execution in Civil Case Nos. 92-368 and 92-409 (*rollo* [OCA IPI No.12-3867-RTJ], pp. 411-412).

[55] *Rollo* (OCA IPI No. 12-3867-RTJ), pp. 381-395. Issued by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[56] *Id*. at 394-395.

[57] See *id*. at 391-392.

With regard to the charge of undue delay, the OCA found respondent's explanation to be meritorious, as the latter clarified that between the filing of the first motion for execution and the issuance of the July 14, 2011 Joint Order, he only gave the judgment-defendants the opportunity to comment. Further, he had to first resolve the multiple motions filed by Guzman, *et al*. through their two (2) counsels, as well as by Rizalado, before proceeding with the case. Subsequently, pending compliance with the nomination of an administrator and an accountant, he had already granted the motion for execution filed by Atty. Laya in his December 5, 2011 Order.[58] Finally, the OCA recommended that all the other charges against respondent be dismissed for lack of substantiation.[59]

On the other hand, in recommending that Rizalado be held guilty of contempt of Court, the OCA found that he had the audacity to file several administrative cases against respondent, all in connection with G.R. No. 188427 **(Civil Case Nos. 92-368 and 92-409)** and all accusing the latter of delay, ignorance of the law, and/or partiality.[60]

The Issue Before the Court

The sole issue for the Court's resolution is whether grounds exist in this case to hold respondent administratively liable and to find Rizalado guilty of contempt of court.

The Court's Ruling

The Court concurs with the findings of the OCA.

It is well-settled that "in administrative proceedings, the burden of proof that respondents committed the acts complained of rests on the complainant. x x x. Bare allegations of bias and partiality are not enough in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law

---

[58] See *id*. at 392-393.

[59] See *id*. at 394-395.

[60] See *id*. at 393-395.

and evidence and without fear or favor. There should be clear and convincing evidence to prove the charge of bias and partiality. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error that may be inferred from the decision or order itself."[61]

In this case, the charges of bias and partiality against respondent have not been substantiated. Complainants failed to present substantial evidence to prove that respondent was motivated by bias, bad faith, or partiality in the disposition of G.R. No. 188427 (Civil Case Nos. 92-368 and 92-409), particularly in the issuance of the January 31, 2011 Order and July 14, 2011 Joint Order.

Moreover, it has been held that "the filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists."[62] "The law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The *ordinary remedies* against errors or irregularities which may be regarded as normal in nature (*i.e.,* error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The *extraordinary remedies* against error or irregularities which may be deemed extraordinary in character (*i.e.,* whimsical, capricious, despotic exercise of power or neglect of duty, *etc*.) are [, *inter alia,*] the special civil actions of *certiorari,* prohibition or *mandamus,* or a motion for inhibition, a petition for change of venue, as the case may be."[63]

Relative thereto, "disciplinary proceedings and criminal actions against judges are not complementary or suppletory

---

[61] *Rivera v. Mendoza*, 529 Phil. 600, 606 (2006); citations omitted.

[62] *Barbers v. Laguio, Jr.*, 404 Phil. 443, 458 (2001).

[63] *Rivera v. Mendoza*, *supra* note 61, at 606-607, citing *Flores v. Abesamis*, 341 Phil. 299, 312-313 (1997).

of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed."[64]

As such, the Court concurs with the OCA's opinion in this case that if Guzman, *et al.* indeed believed that respondent's issuances pertaining to G.R. No. 188427 (Civil Case Nos. 92-368 and 92-409) were tainted with irregularity, they should have availed themselves of the appropriate judicial remedies and refrained from filing these administrative cases against respondent. It bears to stress that respondent is legally clothed with judicial discretion in the disposition of cases, which involves the exercise of judgment. As a judge, he must be allowed reasonable latitude for the operation of his own individual view of the case, his appreciation of the facts, and his understanding of the applicable law on the matter.[65] "To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, would be nothing short of harassment and would make his position doubly unbearable. To hold otherwise would be to render judicial office untenable, for no one called upon to try facts or interpret the law in the process of administering justice can be infallible in his judgment. It is only where the error is so gross, deliberate and malicious, or incurred with evident bad faith that administrative sanctions may be imposed against the erring judge."[66]

---

[64] *Rivera v. Mendoza*, *id.* at 607, citing *Flores v. Abesamis*, *id*. at 313.

[65] *Re: Judge Silverio S. Tayao, RTC, Br. 143, Makati*, A.M. Nos. 93-8-1204-RTC and RTJ-93-978, February 7, 1994, 229 SCRA 723, 729.

[66] *Rodriguez v. Gatdula*, 442 Phil. 307, 312 (2002), citing *Mendova v. Afable*, 441 Phil. 694, 701 (2002).

As regards the charge of undue delay in the resolution of the motions for execution, the Court finds respondent's explanation meritorious, considering the multiple motions filed by Guzman, *et al.*'s two counsels. In any case, respondent had already granted the motion for execution filed by Atty. Laya in his December 5, 2011 Order.

On the other hand, Rizalado has indiscriminately and repetitively filed several complaints against respondent, all in connection with the latter's disposition of G.R. No. 188427 (Civil Case Nos. 92-368 and 92-409). The filing of multiple complaints against respondent has therefore resulted in confusion due to the number of actions docketed before the OCA. In this respect, the Court concurs with the OCA recommendation that Rizalado be found guilty of contempt of court, likewise taking into consideration his previous transgression and penalty in *Othello Ch. Guzman, et al. by Oscar Rizalado v. Executive Judge Edgardo T. Lloren* where he was meted with a fine[67] for his unjustified attacks against the competence and integrity of judges and was ordered arrested for his refusal to pay the fine.[68] However, instead of imposing the penalty of imprisonment for five (5) days in addition to the payment of the fine of ₱5,000.00, the Court deems it proper to increase the amount of the fine to ₱20,000.00, with a stern warning that a repetition of the same offense shall be dealt with more severely.

WHEREFORE, the administrative complaints against respondent Presiding Judge Gil G. Bollozos of the Regional Trial Court of Cagayan De Oro City, Misamis Oriental, Branch 21 are hereby **DISMISSED** for lack of merit. On the other hand, complainant Oscar C. Rizalado is found **GUILTY** of contempt of Court and **ORDERED** to pay the **FINE** in the amount of ₱20,000.00, with a **STERN WARNING** that a repetition of the same shall be dealt with more severely.

---

[67] See Resolution dated December 4, 2006 in A.M. OCA IPI No. 06-2435-RTJ; *rollo* (OCA IPI No. 11-3800-RTJ), pp. 110-115.

[68] See Resolution and Warrant of Arrest both dated April 22, 2009 issued by the Court; *rollo* (OCA IPI No. 06-2435-RTJ), pp. 259-260 and 261-263, respectively.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177000. June 19, 2017]

NESTOR GUELOS, RODRIGO GUELOS, GIL CARANDANG and SPO2 ALFREDO CARANDANG *y* PRESCILLA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI*; PROPER WHERE A CASE PRESENTS A QUESTION OF LAW.— Pursuant to the settled rule that in a criminal case an appeal throws the whole case open for review, the Court, however, finds that this case actually presents a question of law; specifically, on whether or not the constitutional right of the accused to be informed of the nature and cause of the accusation against them was properly observed.

2. ID.; ID.; ID.; A MOTION FOR NEW TRIAL ON THE GROUND OF NEWLY DISCOVERED EVIDENCE MAY NOT BE ENTERTAINED TOGETHER WITH A PETITION FOR APPEAL ON *CERTIORARI*.— [T]he Rules of Court proscribe the availment of the remedy of new trial on the ground of newly discovered evidence at this stage of appeal. Section 1 of Rule 121 states: At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration. Under Section 14 of Rule 124, a motion for new trial on the ground of newly discovered evidence may be filed at any time after the appeal from the lower court

has been perfected and before the judgment of the CA convicting the appellant becomes final. Further, Rule 45, Section 1 clearly provides that a motion for new trial is not among the remedies which may be entertained together with a petition for appeal on *certiorari*.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; EVEN IF A WITNESS SAYS THAT WHAT HE HAD PREVIOUSLY DECLARED IS FALSE AND THAT WHAT HE NOW SAYS IS TRUE IS NOT SUFFICIENT GROUND TO RENDER THE PREVIOUS TESTIMONY AS FALSE, FOR IT IS A DANGEROUS RULE TO SET ASIDE A TESTIMONY WHICH HAS BEEN SOLEMNLY TAKEN BEFORE A COURT OF JUSTICE IN AN OPEN AND FREE TRIAL AND UNDER CONDITIONS PRECISELY SOUGHT TO DISCOURAGE AND FORESTALL FALSEHOOD SIMPLY BECAUSE ONE OF THE WITNESSES WHO HAD GIVEN THE TESTIMONY LATER ON CHANGED HIS MIND.— Jurisprudence dictates that even if a witness says that what he had previously declared is false and that what he now says is true is not sufficient ground to render the previous testimony as false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement not that a previous statement is presumed to be false merely because a witness now says that the same is not true. Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. Thus, the Court finds no reason to give merit to the petitioners' contentions of alleged new evidence.

4. ID.; ID.; ID.; 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 OFTEN ACCORDED FINALITY, UNLESS THERE APPEARS IN THE RECORD SOME FACT OR CIRCUMSTANCE OF WEIGHT WHICH

THE LOWER COURT MAY HAVE OVERLOOKED, MISUNDERSTOOD OR MISAPPRECIATED AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE.— In *Sison v. People of the Philippines*, the Court has held that: [W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, x x x all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witness were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [CA]. For this reason alone, the petition must fail.

5. CRIMINAL LAW; REVISED PENAL CODE; DIRECT ASSAULT; FORMS; DIRECT ASSAULT UPON AN AGENT OF A PERSON IN AUTHORITY, ELEMENTS.— While the elements constituting the crime of Homicide were properly alleged in the two Informations and were duly established in the trial, the said Informations, however, failed to allege all the elements constitutive of the applicable form of direct assault. To be more specific, the Informations do not allege that the offenders/petitioners knew that the ones they were assaulting were agents of a person in authority, in the exercise of their duty. Direct assault, a crime against public order, may be committed in two ways: *first*, by "any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition"; and *second*, by any person or persons who, without a public uprising, "shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the

performance of official duties, or on occasion of such performance." Indubitably, the instant case falls under the second form of direct assault. The following elements must be present, to wit: 1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance; 2. That the person assaulted is a person in authority or his agent; 3. That at the time of the assault, the person in authority or his agent (a) is engaged in the actual performance of official duties, or (b) is assaulted by reason of the past performance of official duties; 4. **That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties**; and 5. That there is no public uprising.

6. ID.; ID.; HOMICIDE WITH ASSAULT UPON AN AGENT OF A PERSON IN AUTHORITY; THE ESTABLISHMENT OF THE FACT THAT THE ACCUSED CAME TO KNOW THAT THE VICTIMS WERE AGENTS OF A PERSON IN AUTHORITY CANNOT CURE THE LACK OF ALLEGATION IN THE INFORMATIONS THAT SUCH FACT WAS KNOWN TO THE ACCUSED WHICH RENDERS THE SAME DEFECTIVE; NEITHER CAN THIS FACT BE CONSIDERED AS A GENERIC AGGRAVATING CIRCUMSTANCE.— [T]he establishment of the fact that the petitioners came to know that the victims were agents of a person in authority cannot cure the lack of allegation in the Informations that such fact was known to the accused which renders the same defective. In addition, neither can this fact be considered as a generic aggravating circumstance under paragraph 3 of Article 14 of the RPC for *acts committed with insult or in disregard of the respect due the offended party on account of his rank* to justify the imposition of an increased penalty against the petitioners. As the Court held in *People v. Rodil*: While the evidence definitely demonstrated that appellant knew because the victim, who was in civilian clothing, told him that he was an agent of a person in authority, he cannot be convicted of the complex crime of homicide with assault upon an agent of a person in authority, for the simple reason that the information does not allege the fact that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority. x x x. Like a qualifying circumstance, such knowledge must be expressly and specifically averred in the information; otherwise, in the absence of such

allegation, the required knowledge, like a qualifying circumstance, although proven, would only be appreciated as a generic aggravating circumstance.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; NOT SATISFIED WHERE A COMPLAINT OR INFORMATION DOES NOT CONTAIN ALL THE ELEMENTS CONSTITUTING THE CRIME CHARGED, AND THE FACT THAT ALL THE ELEMENTS OF THE CRIME WERE DULY PROVEN IN TRIAL CANNOT CURE THE DEFECT OF A COMPLAINT OR INFORMATION.—** "The Constitution mandates that the accused, in all criminal prosecutions, shall enjoy the right to be informed of the nature and cause of the accusation against him. From this fundamental precept proceeds the rule that the accused may be convicted only of the crime with which he is charged." This right is accorded by the Constitution so that the accused can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating on his defense against the ground alleged would plainly be unfair and underhanded. It must be noted that said constitutional right is implemented by the process of arraignment in which the allegations in the document charging an offense is read and made known to the accused. Accordingly, a Complaint or Information which does not contain all the elements constituting the crime charged cannot serve as a means by which said constitutional requirement is satisfied. Corollarily, the fact that all the elements of the crime were duly proven in trial cannot cure the defect of a Complaint or Information to serve its constitutional purpose.

8. **ID.; ID.; PROSECUTION OF OFFENSES; WHEN THE LAW OR RULES SPECIFY CERTAIN CIRCUMSTANCES THAT CAN AGGRAVATE AN OFFENSE OR THAT WOULD ATTACH TO SUCH OFFENSE A GREATER PENALTY THAN THAT ORDINARILY PRESCRIBED, SUCH CIRCUMSTANCES MUST BE BOTH ALLEGED IN THE INFORMATION AND PROVEN IN ORDER TO JUSTIFY THE IMPOSITION OF THE INCREASED PENALTY.—** Pursuant to the constitutional precept, the 2000 Revised Rules of Criminal Procedure requires that every element

of the offense must be alleged in the complaint or information so as to enable the accused to suitably prepare his defense. **Corollarily, qualifying circumstances or generic aggravating circumstances will not be appreciated by the Court unless alleged in the Information**. This requirement is now laid down in Sections 8 and 9 of Rule 110 x x x. The 2000 Revised Rules of Criminal Procedure explicitly mandates that qualifying and aggravating circumstances must be stated in ordinary and concise language in the complaint or information. When the law or rules specify certain circumstances that can aggravate an offense or that would attach to such offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proven in order to justify the imposition of the increased penalty. Due to such requirement being *pro reo*, the Court has authorized its retroactive application in favor of even those charged with felonies committed prior to December 1, 2000 (*i.e*., the date of the effectivity of the 2000 Revised Rules of Criminal Procedure that embodied the requirement).

9. ID.; ID.; ID.; ID.; THE COMPLAINT MUST CONTAIN A SPECIFIC ALLEGATION OF EVERY FACT AND CIRCUMSTANCE NECESSARY TO CONSTITUTE THE CRIME CHARGED, THE ACCUSED BEING PRESUMED TO HAVE NO INDEPENDENT KNOWLEDGE OF THE FACTS THAT CONSTITUTE THE OFFENSE, AND THE FAILURE OF THE ACCUSED TO RAISE AN OBJECTION TO THE INSUFFICIENCY OR DEFECT IN THE INFORMATION WOULD NOT AMOUNT TO A WAIVER OF ANY OBJECTION BASED ON SAID GROUND OR IRREGULARITY.— In *People v. Flores, Jr*., as reiterated in the more recent cases of *People v. Pangilinan* and *People v. Dadulla*, the Court ruled that the constitutional right of the accused to be informed of the nature and cause of the accusation against him cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment *must fully state the elements of the specific offense* alleged to have been committed. For an accused cannot be convicted of an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information. In other words, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged, **the accused being presumed to have no independent**

knowledge of the facts that constitute the offense. Under Section 9 of Rule 117 of the 2000 Revised Rules on Criminal Procedure, **an accused's failure to raise an objection to the insufficiency or defect in the information would not amount to a waiver of any objection based on said ground or irregularity**.

10. ID.; ID.; ID.; ID.; THE REAL NATURE OF THE CRIMINAL CHARGE IS DETERMINED NOT FROM THE CAPTION OR PREAMBLE OF THE INFORMATION NOR FROM THE SPECIFICATION OF THE PROVISION OF LAW ALLEGED TO HAVE BEEN VIOLATED, THEY BEING CONCLUSIONS OF LAW, BUT BY THE ACTUAL RECITAL OF FACTS IN THE COMPLAINT OR INFORMATION; PETITIONERS FOUND GUILTY ONLY OF THE CRIME OF HOMICIDE.— [T]he petitioners can only be convicted of the crime of Homicide instead of the complex crime of Direct Assault Upon an Agent of a Person in Authority with Homicide due to the simple reason that the Informations do not sufficiently charge the latter. [T]he real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information . . . it is not the technical name given by the Fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the Information.

11. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF JUSTIFIED REGARDLESS OF WHETHER OR NOT THE GENERIC OR QUALIFYING AGGRAVATING CIRCUMSTANCES ARE ALLEGED IN THE INFORMATION; NATURE OF EXEMPLARY DAMAGES, ELUCIDATED.— [B]y reason of the fact that the presence of the aggravating circumstance of *acts committed with insult or in disregard of the respect due the offended party on account of his rank* was proven in the course of the trial, exemplary damages should be awarded in each case in addition to such other damages that were already awarded by the courts below. Exemplary damages are justified regardless of whether or not the generic or qualifying aggravating circumstances are alleged in the information. The grant in this regard should be in the sum of ₱30,000.00. In the case of *People v. Catubig*, the

> Court elucidated on the nature of exemplary damages, thus: Also known as "punitive" or "vindictive" damages, **exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.** x x x In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant - associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages **that may be awarded against a person to punish him for his outrageous conduct.** In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future. Accordingly, since the petitioners are all found to be principally liable for the crimes committed as conspiracy was duly proven, exemplary damages in the amount of ₱30,000.00 should be awarded against each of them.

APPEARANCES OF COUNSEL

Quial Ginez & Beltran for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated November 17, 2006 of the Court of Appeals (CA) in CA-G.R.

---

[1] *Rollo*, pp. 11-39.

[2] Penned by Associate Justice Andres B. Reyes Jr., with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo concurring; *id.* at 42-59.

CR No. 27021, affirming *in toto* the conviction of Nestor Guelos (Nestor), Rodrigo Guelos (Rodrigo), Gil Carandang (Gil) and Senior Police Officer 2 Alfredo Carandang *y* Prescilla (Alfredo) (petitioners) rendered by the Regional Trial Court (RTC) of Tanauan City, Batangas, Branch 83 in its Decision[3] dated January 24, 2003 in Criminal Cases Nos. P-204 and P-205. The CA Resolution[4] dated March 6, 2007 denied the motion for reconsideration thereof.

The Facts

On December 5, 1995, two separate Informations[5] were filed with the RTC against the petitioners for Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the Revised Penal Code (RPC). The accusatory portions of the two Informations state:

Criminal Case No. P-204

That on or about the 4th day of June, 1995, at about 5:00 o'clock in the afternoon, at Barangay Boot, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping one another, [Nestor] while armed with an Armalite Rifle, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm one SPO2 Estelito Andaya, a bonafide member of the Philippine National Police assigned at Tanauan Police Station, while engaged in the performance of his official duties as peace officer, and while the latter is being held from the back by [Gil] and other companions, whose identities and whereabouts are still unknown, thereby hitting and inflicting upon the said SPO2 Estelito Andaya gunshot wounds on his body which caused his instantaneous death.

Contrary to law.[6]

---

[3] Rendered by Judge Voltaire V. Rosales: *id*. at 76-85.

[4] *Id*. at 62.

[5] *Id*. at 72-73, 74-75.

[6] *Id*. at 72-73.

Criminal Case No. P-205

That on or about the 4th day of June, 1995, at about 5:00 o'clock in the afternoon, at Barangay Boot, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping each other, [Nestor] while armed with an Armalite Rifle, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm, one P/Chief Inspector Rolando M. Camacho, a bonafide member of the Philippine National Police and concurrently the Chief of Police of Tanauan, Batangas, while engaged in the performance of his official duties as peace officer, and while the latter is being held at the back including his two arms by [Alfredo] and the barrel of his armalite rifle is being held by [Rodrigo], thereby hitting and inflicting upon the said P/Chief Inspector Rolando M. Camacho gunshot wounds on his head which caused his instantaneous death.

Contrary to law.[7]

The petitioners pleaded not guilty to the foregoing charges. Thereafter, the joint trial of the two cases ensued. The prosecution and the defense presented their respective versions of the case.[8]

The prosecution presented the following witnesses: PO2 Edgardo Carandang (PO2 Carandang), Alex Malabanan, PO2 Pastor Platon Castillo, Ruel Ramos, Ricardo Jordan, SPO1 Anacleto Garcia (SPO1 Garcia), Dr. Olga Bausa, Rowena Rios, Police Inspector Lorna Tria, Dr. Hermogenes Corachea, PO3 Eugenio Llarina, Marilou Reyes Camacho and Teodora Torres Andaya.[9]

On the other hand, the defense presented: Cancio Angulo (Angulo), Juana Precilla and herein petitioners Nestor, Alfredo and Rodrigo as its witnesses.

---

[7] *Id*. at 74-75.

[8] *Id*. at 77.

[9] *Id*. at 46.

The version of the prosecution is as follows:

In the morning of June 4, 1995, Police Chief Inspector Rolando M. Camacho (P/C Insp. Camacho), SPO2 Estelito Andaya (SPO2 Andaya), PO2 Carandang and SPO1 Garcia set off for Sitio Mahabang Buhangin in Tanauan, Batangas to conduct their routine as peace officers of the area. It was already 10:00 a.m. when they left Tanauan Police Station on board a patrol car driven by SPO1 Garcia. While they were in Barangay Gonzales waiting for a boat that would bring them to Sitio Mahabang Buhangin, they heard successive gunshots apparently coming from Barangay Boot. P/C Insp. Camacho then decided to proceed to Barangay Boot to check and to apprehend those who were illegally discharging their firearms. Upon arrival at the place, they were invited for lunch in the house of Angulo. Thereafter, they stayed at the house of the incumbent Barangay Captain, Rafael Gonzales.[10]

At around 2:45p.m., P/C Insp. Camacho instructed SPO2 Andaya and PO2 Carandang to join the religious procession to monitor those who will indiscriminately fire guns. As they were moving on with the procession, they heard successive gunshots, which they determined to have emanated from the backyard of Silveria Guelos (Silveria). They went back to the house of the Barangay Captain to report to P/C Insp. Camacho what they found out. Acting upon their report, P/C Insp. Camacho decided to go with them to the place of Silveria. In going to the house, they rode a passenger jeepney in order to conceal their purpose. SPO1 Garcia drove their patrol car and followed them.[11]

Upon reaching the place of Silveria who let them in, P/C Insp. Camacho, PO2 Carandang and SPO2 Andaya then proceeded to the back of the house where they saw around 15 persons drinking liquor. They also noticed empty shells of armalite rifle scattered on the ground. P/C Insp. Camacho then introduced himself as the Chief of Tanauan Police Station and

---

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

[11] *Id*. at 47, 79-80.

told the group that he and his men were verifying who fired the shots. Someone from the group of drinking men asked him: "Who are you going to pick-up here?" Before P/C Insp. Camacho was able to respond to the taunting question, PO2 Carandang pointed to him the "empty shells" near the comfort room located at the right side from where the group was drinking. Consequently, P/C Insp. Camacho instructed him to collect the scattered empty shells.[12]

When PO2 Carandang was about to follow P/C Insp. Camacho's orders, the former noticed a person, whom he identified as Nestor, wearing a white *sando* and blue walking shorts stand up. While PO2 Carandang was collecting the empty shells, somebody hit him on his nape which caused him to drop his armalite. When he tried to retrieve his firearm, someone hit his hand.[13]

As he was trying to stand up, he saw Alfredo tightly holding (*yapos-yapos*) P/C Insp. Camacho from behind while Rodrigo grabbed the former's baby armalite. As soon as PO2 Carandang was able to stand up, he was hit by Nestor on his left jaw, even as he received a blow to his left eye. Thereafter, as P/C Insp. Camacho was in a helpless and defenseless position, he was shot by Nestor causing him to fall to the ground and later die.[14]

While PO2 Carandang was retreating, he saw SPO2 Andaya being tightly held by the neck by Gil. He then saw Nestor shoot at SPO2 Andaya, who then fell to the ground and died.[15]

PO2 Carandang retreated and started to run but Nestor went after him and shot at him. It was at this juncture when SPO1 Garcia arrived at the scene and returned fire at Nestor, hitting the latter with three out of six shots.[16]

---

[12] *Id*. at 77-78.

[13] *Id*. at 78.

[14] *Id*. at 48.

[15] *Id*.

[16] *Id*. at 78.

For the defense, petitioners Nestor, Alfredo and Rodrigo took the witness stand and denied the accusations. They narrated a different story.[17]

Nestor testified that at around 3:00 p.m. on June 4, 1995, he was inside the house of his mother when he heard several gunshots. He told his children to lie flat on the floor until it stopped. Thereafter, he went out of the house and saw four persons lying on the ground; he identified two of them as Gil and Alfredo. He also saw an old man standing nearby and asked the latter what happened, but the old man did not reply. Just when he heard that people were rushing towards his mother's house, the old man asked him to pick up the gun laying on the ground. He followed and picked up the same with the intention of surrendering it to a police officer but as he was on his way towards the gate, SPO1 Garcia shot him instead. He was hit three times: on his stomach, his left side, and on his left hand.[18]

Alfredo, on the other hand, testified that as they were drinking, P/C Insp. Camacho together with two other police officers came. They entered one after the other but P/C Insp. Camacho came in first. They were wearing civilian clothes, although he noticed that P/C Insp. Camacho was also wearing a vest where extra ammunition-magazines were kept. P/C Insp. Camacho was armed with a baby-armalite, while his companions were carrying M-16 rifles. The police officers asked who among them fired a gun to which somebody answered, "We do not know who fired the shot." At this point, Alfredo introduced himself as a fellow-member of the Philippine National Police (PNP); he even saluted P/C Insp. Camacho, but the latter merely ignored the former. Instead, P/C Insp. Camacho pointed the nozzle of his baby armalite at Alfredo's stomach and used it to lift his t-shirt, as the former asked the latter if he had a gun. Alfredo answered that he had none. While P/C Insp. Camacho was frisking three other men, Rodrigo approached him to ask if he can be of help to the former. P/C Insp. Camacho did not answer Rodrigo's

---

[17] *Id.* at 49.

[18] TSN, August 28, 2001, pp. 3-9.

query. Rather, while he was in "port-hand position," P/C Insp. Camacho pushed Rodrigo with his firearm; the latter was out-balanced and fell on his back. While P/C Insp. Camacho was pushing Rodrigo with the use of the nozzle of his "armalite rifle," the latter swiped the said firearm as he told the former, "*Baka pumutok iyan*." Thereupon, the firearm of P/C Insp. Camacho fired; a bullet hit Alfredo's thigh. Thereafter, the latter lost consciousness and awakened only when being transported to a nearby hospital.[19]

Rodrigo testified that in the afternoon of June 4, 1995, he was watching a religious procession in front of the gate of his parents' house when P/C Insp. Camacho and two others, all in civilian clothes and each bearing a long firearm, entered the premises of his parents' house. The group went directly to the area where people were drinking liquor. P/C Insp. Camacho introduced himself as the Chief of Police of Tanauan, and asked who among them fired a gun. He poked his gun at the people there and then started frisking some of them. Alfredo stood up and introduced himself as a fellow-member of the PNP, to which P/C Insp. Camacho responded by poking his gun at the former, asking him if he had a gun. Answering "none," Alfredo pulled-up his t-shirt to show he had no gun. His t-shirt was lifted by P/C Insp. Camacho with the nozzle of his gun. Rodrigo approached P/C Insp. Camacho and offered to assist the latter, but instead, P/C Insp. Camacho pointed the gun at his face. Rodrigo swayed the gun away from his face, but he was, in turn, pushed back by P/C Insp. Camacho with the use of the barrel of the same gun causing him to fall to the ground. Then he heard several gunshots, so he covered his head with his hands. When the gunshots stopped, he saw two persons lying, one by his left side and the other, by his right. He then ran for help but on his way out of the premises, he saw a wounded person whom he offered to help. The wounded person ignored him and continued to walk towards a jeepney. Rodrigo proceeded to approach a Barangay *Tanod* and asked him to report the incident

---

[19] TSN, August 31, 2000, pp. 9-15.

to the Barangay Captain. Soon thereafter, the Barangay Captain arrived; police officers from Tanauan also came and Rodrigo was invited to the Police Station for investigation.[20]

On January 24, 2003, the RTC issued a Joint Decision,[21] the dispositive portion of which reads:

> WHEREFORE, in Criminal Case No. P-204, this Court finds accused [NESTOR] and [GIL] GUILTY BEYOND REASONABLE DOUBT of Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the [RPC], for killing [SPO2 Andaya], and hereby sentences each of the accused to suffer the penalty of eleven (11) years of *prision correccional* maximum, as minimum, up to eighteen (18) years of *reclusion temporal* maximum, as maximum, and a fine of One Thousand Pesos (Php1,000.00). The accused are directed to pay the heirs of victim [SPO2 Andaya] an indemnity of Fifty Thousand Pesos (Php50,000.00), actual damages in the amount of One Million Pesos (Php1,000,000.00), and moral damages of Fifty Thousand Pesos (Php50,000.00).
>
> In Criminal Case No. P-205, the Court finds accused [NESTOR], [RODRIGO] and [ALFREDO] GUILTY BEYOND REASONABLE DOUBT of Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the [RPC], for killing [P/C Insp. Camacho], and hereby sentences each of the accused to suffer the penalty of eleven (11) years of *prision correccional* maximum, as minimum, up to eighteen (18) years of *reclusion temporal* maximum, as maximum, and to pay a fine of One Thousand Pesos (Php1,000.00) each. The accused are directed to pay the heirs of victim [P/C Insp. Camacho] an indemnity of Fifty Thousand Pesos (Php50,000.00), actual damages in the amount of One Million Six Hundred Thousand Pesos (Php1,600,000.00), and moral damages of Fifty Thousand Pesos (Php50,000.00).
>
> SO ORDERED.[22]

---

[20] TSN, February 13, 2001, pp. 4-14.

[21] *Rollo*, pp. 76-85.

[22] *Id*. at 85.

The RTC found that between the conflicting versions of the parties, that of the prosecution is more credible; the positive declarations of the police officers who testified for the prosecution, particularly that of eyewitness PO2 Carandang, were not impeached.[23] Further, the RTC did not find any reason for any of the prosecution witnesses to falsely testify against the accused. The trial court observed that said witnesses, with special reference to PO2 Carandang, testified in a straightforward manner and showed signs of candor, as compared to the accused, who were smart-alecky and did not sound truthful.[24] The petitioners appealed to the CA.

On November 17, 2006, the CA affirmed *in toto* the petitioners' conviction in its Decision[25] as follows:

WHEREFORE, the Decision appealed from is hereby **AFFIRMED** *in toto*.

SO ORDERED.[26]

Hence, this petition for review with the following assignment of errors:

A. THE CA GRAVELY ERRED IN RELYING ON THE UNSUBSTANTIATED TESTIMONY OF THE ALLEGED EYEWITNESS PO2 CARANDANG AND HOLDING THE PETITIONERS GUILTY OF THE CRIME CHARGED.

B. THE CA ERRED IN AFFIRMING *IN TOTO* THE JUDGMENT OF THE LOWER COURT NOTWITHSTANDING THE GLARING INSUFFICIENCY OF EVIDENCE TO WARRANT THE CONVICTION OF THE PETITIONERS.

C. THE CA GRAVELY ERRED IN HOLDING THAT THERE IS CONSPIRACY BETWEEN THE PETITIONERS DESPITE FAILURE OF THE PROSECUTION TO PROVE THE SAME.[27]

---

[23] *Id*. at 83.

[24] *Id*. at 84.

[25] *Id*. at 42-59.

[26] *Id*. at 59.

[27] *Id*. at 21.

Forthwith, the petitioners fault the CA for affirming their conviction, contending that the testimonies of the prosecution witnesses were uncorroborated by evidence sufficient to establish the petitioners' guilt beyond reasonable doubt. Specifically, the petitioners allege the following, to wit:

> 1. There is no direct assault of a person in authority to speak of because the group of P/C Insp. Camacho was not in the performance of their duties. The prosecution failed to present the alleged mission order supporting the intelligence operation conducted by P/C Insp. Camacho and his men in Barangay Boot. Further, while the police officers were in civilian attire (shorts, slippers and t-shirts) to go undercover, they were carrying rifles that were not concealed;[28]
>
> 2. The injuries suffered by PO2 Carandang, as a result of the assault upon his person while he was in the act of collecting the empty bullet shells, are also unsupported by evidence. The trial court simply took the testimony of PO2 Carandang as the "biblical truth;"[29] and
>
> 3. The narration of PO2 Carandang on how P/C Insp. Camacho and SPO2 Andaya were killed cannot stand the test of logic. He could not have possibly witnessed the entire event at the precise moment that he was also assaulted and injured.[30]

Notably, in their Reply,[31] the petitioners incorporated a motion for new trial based on alleged new and material evidence impugning the credibility of PO2 Carandang. They averred that in the case for Direct Assault with Attempted Homicide which PO2 Carandang also filed against Nestor, docketed as Criminal Case No. 95-401 and pending before the Municipal Trial Court (MTC) of Tanauan, Batangas, his testimony therein given from

---

[28] *Id*. at 25-26.

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

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

[31] *Id*. at 206-227.

October 10, 2007 to July 30, 2008 was different from his testimony in the case at bar.[32]

Ruling of the Court

It is clear that the petitioners basically raise only questions of fact. Nonetheless, the Court gave due course to the instant petition due to the following reasons:

Firstly, pursuant to the settled rule that in a criminal case an appeal throws the whole case open for review,[33] the Court, however, finds that this case actually presents a question of law; specifically, on whether or not the constitutional right of the accused to be informed of the nature and cause of the accusation against them was properly observed.

Secondly, the petitioners, in the Reply, invite the Court's attention to the subsequent testimony of PO2 Carandang in the later case filed against Nestor. The petitioners assert that said testimony should be considered as new and material evidence which thereby makes the findings of the trial court in the instant case as manifestly mistaken, absurd or impossible. Thus, the petitioners moved for a new trial on the ground of alleged newly discovered evidence without, however, necessarily withdrawing their petition.

At the outset, the petitioners' motion for new trial is denied.

Clearly, the Rules of Court proscribe the availment of the remedy of new trial on the ground of newly discovered evidence at this stage of appeal. Section 1 of Rule 121 states:

> At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration.

Under Section 14 of Rule 124, a motion for new trial on the ground of newly discovered evidence may be filed at any time

---

[32] *Id.* at 211-221.

[33] *People v. Tambis*, 582 Phil. 339, 344 (2008).

after the appeal from the lower court has been perfected and before the judgment of the CA convicting the appellant becomes final. Further, Rule 45, Section 1 clearly provides that a motion for new trial is not among the remedies which may be entertained together with a petition for appeal on *certiorari*.

More importantly, the alleged newly discovered evidence is not worthy of the Court's consideration.

The petitioners allege that in the MTC proceedings, PO2 Carandang failed to positively identify who actually hit him and/or the persons involved in the killing of P/C Insp. Camacho and SPO2 Andaya which is a complete turn-around from his testimony in the case at bar where he positively identified the petitioners as the perpetrators. At any rate, aside from this alleged glaring inconsistency of PO2 Carandang's testimony, said subsequent testimony is marred by inconsistencies in itself. For instance, in his cross-examination on May 14, 2008, he stated that when he came to his full consciousness after being unconscious or dizzy for about two minutes, he saw P/C Insp. Camacho and SPO2 Andaya lying down; then, during his re-cross examination on July 30, 2008, he stated that when he regained consciousness after being unconscious or dizzy for about five minutes, he did not see where P/C Insp. Camacho or his other teammates were. Still, on numerous occasions, he failed to categorically answer questions as he could not recall. Considering the value of PO2 Carandang's testimony, he being the only eyewitness to the said fateful event, there would have been no sufficient evidence to prove the guilt of the petitioners.[34]

However, the Court cannot agree with the petitioners' contention that the testimony of PO2 Carandang before the MTC effectively cast doubt upon his previous testimony or makes it a falsity. The MTC testimony was given after 10 years from the time PO2 Carandang testified in the case at bar. Considering the length of time that had elapsed and the frailty of human memory, the Court gives more credence to PO2 Carandang's

---

[34] *Rollo*, pp. 211-221.

testimony in the instant case which was given after a year and 10 months from the incident testified upon. In fact, the drama of the fateful incident appeared so fresh to PO2 Carandang that in the course of his direct examination on April 22, 1997 and while he was demonstrating how Alfredo embraced P/C Insp. Camacho, he became 'emotional' when asked about the next thing that happened to P/C Insp. Camacho.[35]

Jurisprudence dictates that even if a witness says that what he had previously declared is false and that what he now says is true is not sufficient ground to render the previous testimony as false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement not that a previous statement is presumed to be false merely because a witness now says that the same is not true. Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.[36]

Thus, the Court finds no reason to give merit to the petitioners' contentions of alleged new evidence.

In *Sison v. People of the Philippines*,[37] the Court has held that:

> [W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case.

---

[35] TSN, April 22, 1997, pp. 11-12.

[36] *Firaza v. People*, 547 Phil. 572, 584 (2007).

[37] 682 Phil. 608 (2012).

The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, x x x all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witness were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [CA].[38]

For this reason alone, the petition must fail.

However, the Court cannot totally affirm the rulings of the courts below. As forthwith stated, an appeal in a criminal case opens the entire case for review; the Court can correct errors unassigned in the appeal. The Court finds that the Informations in this case failed to allege all the elements which constitute the crime charged.

The petitioners are being charged with the complex crime of Direct Assault Upon an Agent of a Person in Authority with Homicide, defined and penalized under Articles 148 and 249, in relation to Article 48, of the RPC.

The RPC provides:

Art. 148. *Direct assaults*.— Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purpose enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine not exceeding ₱1,000.00 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding ₱500.00 pesos shall be imposed.

---

[38] *Id*. at 622, citing *People v. Espino, Jr.*, 577 Phil. 546, 562-563 (2008).

Art. 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

Art. 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

While the elements constituting the crime of Homicide were properly alleged in the two Informations and were duly established in the trial, the said Informations, however, failed to allege all the elements constitutive of the applicable form of direct assault. To be more specific, the Informations do not allege that the offenders/petitioners knew that the ones they were assaulting were agents of a person in authority, in the exercise of their duty.

Direct assault, a crime against public order, may be committed in two ways: *first*, by "any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition"; and *second*, by any person or persons who, without a public uprising, "shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance."[39] (Citation omitted)

Indubitably, the instant case falls under the second form of direct assault. The following elements must be present, to wit:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance;
2. That the person assaulted is a person in authority or his agent;

---

[39] *People v. Recto*, 419 Phil. 674, 689-690 (2001).

3. That at the time of the assault, the person in authority or his agent (a) is engaged in the actual performance of official duties, or (b) is assaulted by reason of the past performance of official duties;
4. **That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties**; and
5. That there is no public uprising.

In the instant case, the Informations[40] alleged the following, to wit:

1. That on or about the 4th day of June 1995, at about 5:00 p.m., in Barangay Boot, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping one another, Nestor while armed with an armalite rifle, with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm the victims, SPO2 Andaya/P/C Insp. Camacho;

2. That the said victims are bona fide members of the PNP assigned at Tanauan Police Station, and one of them was the current Chief of Police of Tanauan, Batangas; and

3. That at the time of the incident, they were engaged in the performance of their official duties.

In the course of the trial, the evidence presented sufficiently established the foregoing allegations including the fact that the petitioners came to know that the victims were agents of a person in authority, as the latter introduced themselves to be members of the PNP.

Nevertheless, the establishment of the fact that the petitioners came to know that the victims were agents of a person in authority

[40] *Rollo*, pp. 72-73, 74-75.

cannot cure the lack of allegation in the Informations that such fact was known to the accused which renders the same defective. In addition, neither can this fact be considered as a generic aggravating circumstance under paragraph 3 of Article 14 of the RPC for *acts committed with insult or in disregard of the respect due the offended party on account of his rank* to justify the imposition of an increased penalty against the petitioners.

As the Court held in *People v. Rodil*:[41]

> While the evidence definitely demonstrated that appellant knew because the victim, who was in civilian clothing, told him that he was an agent of a person in authority, he cannot be convicted of the complex crime of homicide with assault upon an agent of a person in authority, for the simple reason that the information does not allege the fact that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority. The information simply alleges that appellant did "attack and stab PC Lt. Guillermo Masana while the latter was in the performance of his official duties, . . ." Such an allegation cannot be an adequate substitute for the essential averment to justify a conviction of the complex crime, which necessarily requires the imposition of the maximum period of the penalty prescribed for the graver offense. Like a qualifying circumstance, such knowledge must be expressly and specifically averred in the information; otherwise, in the absence of such allegation, the required knowledge, like a qualifying circumstance, although proven, would only be appreciated as a generic aggravating circumstance. Applying this principle, the attack on the victim, who was known to the appellant as a peace officer, could be considered only as aggravating, being "in contempt of/or with insult to public authorities" (Par. [2], Art. XIV of the [RPC], or as an "insult or in disregard of the respect due the offended party on account of his rank, . . ." (Par. 3, Art. XIV, [RPC]).
>
> It is essential that the accused must have knowledge that the person attacked was a person in authority or his agent in the exercise of his duties, because the accused must have the intention to offend, injure, or assault the offended party as a person in authority or agent of a person in authority.[42]

---

[41] 196 Phil. 79 (1981).

[42] *Id.* at 99-100.

"The Constitution mandates that the accused, in all criminal prosecutions, shall enjoy the right to be informed of the nature and cause of the accusation against him. From this fundamental precept proceeds the rule that the accused may be convicted only of the crime with which he is charged."[43] This right is accorded by the Constitution so that the accused can prepare an adequate defense against the charge against him. Convicting him of a ground not alleged while he is concentrating on his defense against the ground alleged would plainly be unfair and underhanded.[44] It must be noted that said constitutional right is implemented by the process of arraignment[45] in which the allegations in the document charging an offense is read and made known to the accused. Accordingly, a Complaint or Information which does not contain all the elements constituting the crime charged cannot serve as a means by which said constitutional requirement is satisfied. Corollarily, the fact that all the elements of the crime were duly proven in trial cannot cure the defect of a Complaint or Information to serve its constitutional purpose.

Pursuant to the said constitutional precept, the 2000 Revised Rules of Criminal Procedure requires that every element of the offense must be alleged in the complaint or information so as to enable the accused to suitably prepare his defense. **Corollarily, qualifying circumstances or generic aggravating circumstances will not be appreciated by the Court unless alleged in the Information**. This requirement is now laid down in Sections 8 and 9 of Rule 110, to wit:

SEC. 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

---

[43] *Navarrete v. People*, 542 Phil. 496, 504 (2007).

[44] *People v. Mendigurin*, 456 Phil. 328, 344 (2003).

[45] See *Lumanlaw v. Judge Peralta, Jr.*, 517 Phil. 588, 597 (2006).

SEC. 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense **and the qualifying and aggravating circumstances** must be stated in ordinary and concise language and not necessarily in the language used in the statute **but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.**

The 2000 Revised Rules of Criminal Procedure explicitly mandates that qualifying and aggravating circumstances must be stated in ordinary and concise language in the complaint or information. When the law or rules specify certain circumstances that can aggravate an offense or that would attach to such offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proven in order to justify the imposition of the increased penalty.[46] Due to such requirement being *pro reo*, the Court has authorized its retroactive application in favor of even those charged with felonies committed prior to December 1, 2000 (*i.e.*, the date of the effectivity of the 2000 Revised Rules of Criminal Procedure that embodied the requirement).[47]

In *People v. Flores, Jr.*,[48] as reiterated in the more recent cases of *People v. Pangilinan*[49] and *People v. Dadulla*,[50] the Court ruled that the constitutional right of the accused to be informed of the nature and cause of the accusation against him cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment *must fully state the elements of the specific offense* alleged to have been committed. For an accused cannot be convicted of

---

[46] *People v. Corral*, 446 Phil. 652, 667-668 (2003).

[47] *People v. Dadulla*, 657 Phil. 442, 451 (2011).

[48] 442 Phil. 561 (2002).

[49] 676 Phil. 16 (2011).

[50] 657 Phil. 442 (2011).

an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information.[51] In other words, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged, **the accused being presumed to have no independent knowledge of the facts that constitute the offense**.[52] Under Section 9 of Rule 117 of the 2000 Revised Rules on Criminal Procedure, **an accused's failure to raise an objection to the insufficiency or defect in the information would not amount to a waiver of any objection based on said ground or irregularity**.

Section 9 of Rule 117 of the 2000 Revised Rules on Criminal procedure reads:

> Sec. 9. *Failure to move to quash or to allege any ground therefor.*— The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections **EXCEPT THOSE** based in the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

Indeed, the foregoing provision provides that if an accused fails to assert all the grounds available to him under Section 3 of Rule 11 7 in his motion to quash, or if he, altogether, fails to file a motion a quash — any objection based on the ground or grounds he failed to raise through a motion to quash shall be deemed waived, except the following, thus:

> SEC. 3. *Grounds.*— x x x:
>
> (a) **That the facts charged do not constitute an offense**;
> (b) That the court trying the case has no Jurisdiction over the offense charged;
> x x x x x x x x x
> (g) That the criminal action or liability has been extinguished; [and]
> x x x x x x x x x

---

[51] P*eople v. Flores, Jr., supra* note 48, at 569-570.

[52] *Id*. at 572.

(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.

Therefore, the petitioners can only be convicted of the crime of Homicide instead of the complex crime of Direct Assault Upon an Agent of a Person in Authority with Homicide due to the simple reason that the Informations do not sufficiently charge the latter.

[T]he real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information . . . it is not the technical name given by the Fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the Information.[53]

Nevertheless, by reason of the fact that the presence of the aggravating circumstance of *acts committed with insult or in disregard of the respect due the offended party on account of his rank* was proven in the course of the trial, exemplary damages should be awarded in each case in addition to such other damages that were already awarded by the courts below. Exemplary damages are justified regardless of whether or not the generic or qualifying aggravating circumstances are alleged in the information. The grant in this regard should be in the sum of ₱30,000.00.[54] In the case of *People v. Catubig*,[55] the Court elucidated on the nature of exemplary damages, thus:

Also known as "punitive" or "vindictive" damages, **exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.** x x x In common law,

---

[53] *Velasco v. Sandiganbayan, et al.*, 704 Phil. 302, 314 (2013), citing *Pilapil v. Sandiganbayan*, 293 Phil. 368, 378 (1993).

[54] *People v. Reyes*, 714 Phil. 300, 309-310 (2013).

[55] 416 Phil. 102 (2001).

there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages **that may be awarded against a person to punish him for his outrageous conduct.** In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[56] (Citations omitted and emphasis ours)

Accordingly, since the petitioners are all found to be principally liable for the crimes committed as conspiracy was duly proven, exemplary damages in the amount of ₱30,000.00 should be awarded against each of them.

WHEREFORE, the judgment is hereby **AFFIRMED** with **MODIFICATION**. Petitioners Nestor Guelos, Rodrigo Guelos, Gil Carandang and SPO2 Alfredo Carandang *y* Prescilla are hereby found **GUILTY** of Homicide and sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor*, as minimum, to FOURTEEN (14) YEARS and ONE (1) DAY of *reclusion temporal*, as maximum. The fine of ₱1,000.00 is **DELETED**. In addition to the amount of damages and civil indemnity that were already awarded by the courts below to the respective heirs of Police Chief Inspector Rolando Camacho and Senior Police Officer 2 Estelito Andaya, each of the petitioners are also directed to pay the amount of ₱30,000.00 as exemplary damages to each of the victims.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.*, concur.

---

[56] *Id.* at 118-119.

FIRST DIVISION

[G.R. No. 192391. June 19, 2017]

ESTATE OF HONORIO POBLADOR, JR., represented by RAFAEL A. POBLADOR, *petitioner, vs.* **ROSARIO L. MANZANO,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CIVIL LIABILITY; THE EXTINCTION OF THE PENAL ACTION DOES NOT CARRY WITH IT THE EXTINCTION OF THE CIVIL LIABILITY; EXCEPTION; THE CIVIL ACTION BASED ON DELICT MAY BE DEEMED EXTINGUISHED IF THERE IS A FINDING ON THE FINAL JUDGMENT IN THE CRIMINAL ACTION THAT THE PROSECUTION ABSOLUTELY FAILED TO PROVE THE GUILT OF THE ACCUSED, OR THE ACT OR OMISSION FROM WHICH THE CIVIL LIABILITY MAY ARISE DID NOT EXIST, OR WHERE THE ACCUSED DID NOT COMMIT THE ACTS OR OMISSION IMPUTED TO HIM.— It is a fundamental rule that "[t]he acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: *(a)* the acquittal is based on reasonable doubt as only preponderance of evidence is required; *(b)* the court declares that the liability of the accused is only civil; and *(c)* the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. **However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the [prosecution absolutely failed to prove the guilt of the accused, or the] act or omission from which the civil liability may arise did not exist, or where the accused did not commit the acts or omission imputed to him."**

2. ID.; ID.; ESTAFA; ELEMENTS; WHEN THE ELEMENT OF MISAPPROPRIATION OR CONVERSION IS ABSENT, THERE CAN BE NO ESTAFA AND CONCOMITANTLY, THE CIVIL LIABILITY *EX DELICTO* DOES NOT EXIST.

— In the fairly recent case of *Dy v. People,* the Court discussed the concept of civil liability *ex delicto* in *Estafa* cases under paragraph 1 (b), Article 315 of the RPC (with which Manzano was likewise charged), stating that **when the element of misappropriation or conversion is absent, there can be no *Estafa* and concomitantly, the civil liability *ex delicto* does not exist.** Particularly, the Court said: Our laws penalize criminal fraud which causes damage capable of pecuniary estimation through *estafa* under Article 315 of the Revised Penal Code. In general, the elements of *estafa* are: (1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. The essence of the crime is the unlawful abuse of confidence or deceit in order to cause damage. As this Court previously held, "the element of fraud or bad faith is indispensable." Our law abhors the act of defrauding another person by abusing his trust or deceiving him, such that, it criminalizes this kind of fraud.

3. ID.; ID.; ID.; WHENEVER THE ELEMENTS OF *ESTAFA* ARE NOT ESTABLISHED, AND THAT THE DELIVERY OF ANY PERSONAL PROPERTY WAS MADE PURSUANT TO A CONTRACT, ANY CIVIL LIABILITY ARISING FROM THE ESTAFA CANNOT BE AWARDED IN THE CRIMINAL CASE BECAUSE THE CIVIL LIABILITY ARISING FROM THE CONTRACT IS NOT CIVIL LIABILITY *EX DELICTO,* WHICH ARISES FROM THE SAME ACT OR OMISSION CONSTITUTING THE CRIME.— The Court further clarified that "whenever the elements of *estafa* are not established, and that the delivery of any personal property was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case. This is because the civil liability arising from the contract is not civil liability *ex delicto,* which arises from the same act or omission constituting the crime. Civil liability *ex delicto* is the liability sought to be recovered in a civil action deemed instituted with the criminal case." In this case, the Court agrees with the findings of both the RTC and the CA that the prosecution failed to prove all the elements of *estafa* through misappropriation as defined in, and penalized under, paragraph 1 (b), [Article 315] of the [RPC]. As the RTC aptly noted, Rafael, as the representative of herein petitioner, very well knew of

and concurred with the entire arrangement, including those which had to be made with the BIR. In fact, petitioner itself admitted that it received the full amount of ₱15,200,000.00 — the full amount to which it was entitled to under the terms of the sale of the Wack-Wack Share. For these reasons, petitioner could not claim that it was deceived. Thus, absent the element of fraud, there could be no misappropriation or conversion to speak of that would justify the charge of *Estafa* and, with it, the alleged civil liability *ex delicto*.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; A PRESUMPTION IS AN INFERENCE OF THE EXISTENCE OR NON-EXISTENCE OF A FACT WHICH COURTS ARE PERMITTED TO DRAW FROM PROOF OF OTHER FACTS, BUT A PRESUMPTION IS NOT EVIDENCE, BUT MERELY AFFECTS THE BURDEN OF OFFERING EVIDENCE.— [T]he CA correctly observed that petitioner's evidence utterly failed to show that Manzano personally received the ₱2,800,000.00 from petitioner with the duty to hold it in trust for or to make delivery to the latter. In fact, Rafael categorically admitted that he did not even know who actually paid the taxes to the BIR, and that Manzano's name did not appear in the documents pertaining to the payment of the capital gains tax and documentary stamp tax. This admission clearly contradicts the disputable presumption under Section 3 (q) of Rule 131 of the Rules of Court, *i.e.,* that the ordinary course of business has been followed, which petitioner adamantly relies on to support its claim. A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action. It is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts. **However, a presumption is not evidence, but merely affects the burden of offering evidence. Under Section 3, Rule 131, disputable presumptions are satisfactory, if uncontradicted, but may be contradicted and overcome by other evidence, as in this case.**

5. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW ARE ADDRESSED THEREIN, AS IT IS NOT THE COURT'S FUNCTION TO ANALYZE OR WEIGH THE

EVIDENCE WHICH TASKS BELONG TO THE TRIAL COURT AS THE TRIER OF FACTS AND TO THE APPELLATE COURT AS THE REVIEWER OF FACTS. — [I]t deserves mentioning that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law are addressed. It is not the Court's function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). The Court is confined to the review of errors of law that may have been committed in the judgment under review. "The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive."

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 30, 2009 and the Resolution[3] dated May 26, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 78891 that denied the appeal of petitioner Estate of Honorio Poblador, Jr. (petitioner), represented by Rafael A. Poblador (Rafael), from the Order[4] dated January 13, 2003 of the Regional Trial Court of Pasig City, Branch 157 (RTC). Petitioner appealed the civil aspect of the dismissed criminal case for *Estafa* which it filed against respondent Rosario L. Manzano (Manzano).

---

[1] *Rollo*, pp. 13-42.

[2] *Id.* at 46-57. Penned by then Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Myrna Dimaranan-Vidal and Antonio L. Villamor concurring.

[3] *Id.* at 59. Penned by Associate Justice Antonio L. Villamor with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino concurring.

[4] CA *rollo*, pp. 21-25. Penned by Judge Esperanza Fabon-Victorino.

The Facts

Petitioner was the subject of settlement proceedings in Special Proceedings No. 9984 before the Regional Trial Court of Pasig City (Probate Court). Among its properties was one share of stock in Wack-Wack Golf and Country Club, Inc. (Wack-Wack Share) covered by membership Certificate No. 3759 issued on September 17, 1974.[5]

In an Order dated May 10, 1996, the Probate Court authorized petitioner's administratrix, Elsa A. Poblador (Elsa), to negotiate the sale of certain properties of petitioner, including the Wack-Wack Share. Upon Elsa's instruction, Rafael (one of the heirs of the deceased Honorio Poblador, Jr.) looked for interested buyers. Subsequently, he engaged the services of Manzano, a broker of Metroland Holdings Incorporated (Metroland)[6] who, on September 9, 1996, faxed a computation for the sale of the Wack-Wack Share to petitioner,[7] showing a final net amount of ₱15,000,000.00. On September 18, 1996,[8] the final net amount to the seller was increased to ₱15,200,000.00.

Manzano later introduced Rafael to Moreland Realty, Inc. (Moreland), and in September 1996, the parties entered into a Deed of Absolute Sale[9] with Elsa covering the Wack-Wack Share for the gross amount of ₱18,000,000.00. Out of the ₱18,000,000.00 purchase price, Moreland directly paid Elsa the amount of ₱15,200,000.00 through a Metrobank check.[10] The balance of ₱2,800,000.00 was allegedly given to Manzano for the payment of the capital gains tax, documentary stamp tax, and other pertinent fees, as well as for her service fee.[11]

---

[5] *Rollo*, p. 17.

[6] *Id*.

[7] *Id*. at 60.

[8] *Id*. at 61.

[9] *Id*. at 62.

[10] See acknowledgment receipt; *id*. at 63.

[11] *Id*. at 18.

In October 1996, however, the Probate Court annulled the sale of the Wack-Wack Share. Thus, Elsa returned to Moreland the amount of ₱18,000,000.00 which the latter paid for the Wack-Wack Share, plus interest, and applied with the Bureau of Internal Revenue (BIR) for the refund of the taxes paid for the annulled sale. Petitioner likewise asked Manzano to return the broker's service fee.[12]

Meanwhile, Rafael, through petitioner's accountant, Nonilo P. Torres (Torres), allegedly requested Manzano for an accounting of the ₱2,800,000.00 she received on behalf of petitioner. In response, Manzano faxed the following documents addressed to Torres: (*a*) Cover letter dated February 4, 1997;[13] (*b*) Capital Gains Tax Return dated September 23, 1996 indicating the payment of ₱1,480,000.00 as capital gains tax;[14] (*c*) BIR Certification dated September 23, 1996 indicating the payment of ₱1,480,000.00 as capital gains tax;[15] (*d*) Authority to Accept Payment dated September 23, 1996 indicating the payment of ₱135,000.00 as documentary stamp tax;[16] and (*e*) Deed of Absolute Sale between petitioner, represented by Elsa, and Moreland.[17] Examining these documents, Rafael and Torres allegedly noticed a discrepancy in the faxed Capital Gains Tax Return: while the typewritten portion of the Return indicated ₱1,480,000.00 as the capital gains tax paid, the machine validation imprint reflected only ₱80,000.00 as the amount paid. To clarify the discrepancy, petitioner secured a certified true copy of the Capital Gains Tax Return from the BIR that reflected only ₱80,000.00 as the capital gains tax paid for the sale of the Wack-Wack Share.[18] As a result, petitioner

---

[12] *Id*. at 18-19. See also CA *rollo*, p. 22.

[13] *Id*. at 64.

[14] *Id*. at 65.

[15] *Id*. at 66.

[16] *Id*. at 67.

[17] *Id*. at 19-20 and 62.

[18] *Id*. at 20.

demanded[19] Manzano to properly account for the ₱2,800,000.00 allegedly given to her for the payment of taxes and broker's fees, but to no avail.[20] This led to the filing, on December 8, 1999, of an Information[21] for the crime of *Estafa* under Article 315, paragraph (1) (b) of the Revised Penal Code (RPC) against Manzano before the RTC, docketed as Crim. Case No. 113549.[22] In the course of the proceedings, Manzano filed a Demurrer to Evidence[23] praying for the dismissal of the case for failure of the prosecution to establish the essential elements of *Estafa* with which she was charged.[24]

The RTC Ruling

In an Order[25] dated January 13, 2003, the RTC granted Manzano's Demurrer to Evidence and dismissed the complaint for *Estafa* for failure of the prosecution to "prove all the elements of estafa through misappropriation as defined in and penalized under paragraph 1 (b)[, Article 315] of the Revised Penal Code, x x x."[26] The RTC found that the element of deceit was absent, considering that both Manzano and Rafael were equally guilty of defrauding the government of taxes actually due on the transaction. It pointed out that Rafael knew and concurred with the plan, including the special arrangements that had to be made with the BIR, as long as the estate would receive a higher net proceed from the sale. In fact, petitioner received in full the agreed net sale proceeds of ₱15,200,000.00. Finally, it held that Manzano was entitled to her broker's fee in the amount of ₱900,000.00 as she was

---

[19] *Id.* at 69-70.

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

[21] CA *rollo,* pp. 26-27.

[22] *Rollo,* p. 21.

[23] Not attached to the *rollo.*

[24] *Rollo*, p. 47.

[25] CA *rollo*, pp. 21-25.

[26] *Id.* at 25.

commissioned and successfully closed the transaction for petitioner.[27]

Dissatisfied, petitioner filed a motion for reconsideration[28] which the RTC denied in an Order[29] dated March 11, 2003. Hence, petitioner appealed the civil aspect of the case before the CA.

The CA Ruling

In a Decision[30] dated September 30, 2009, the CA denied petitioner's appeal, declaring that the prosecution did not only fail to prove all the elements of *Estafa* through misappropriation;[31] it also failed to prove the alleged civil liability of Manzano in the amount of ₱2,800,000.00.[32]

It found that the prosecution's evidence failed to show that Manzano personally received the ₱2,800,000.00 earmarked for the payment of taxes and broker's fees.[33] At most, such evidence only proved that Manzano tried to help broker and negotiate the sale of the Wack-Wack Share.[34] In fact, Rafael himself admitted that he was unsure if Manzano indeed received the ₱2,800,000.00. Neither could he state the date when she supposedly received the same.[35]

Moreover, the CA stressed that: (*a*) petitioner readily admitted receipt of the full amount of ₱15,200,000.00 — the amount agreed upon in the computation sent by Manzano — for the

---

[27] *Id*. at 23-25.

[28] Not attached to the *rollo*.

[29] CA *rollo*, p. 13.

[30] *Rollo*, pp. 46-57.

[31] *Id*. at 52.

[32] *Id*. at 54.

[33] *Id*.

[34] *Id*. at 55.

[35] *Id*. at 54, citing Transcript of Stenographic Notes (TSN) dated September 22, 1999 (pp. 41-42) and October 26, 2000 (p. 4).

sale of the Wack-Wack Share which was paid with a check by the buyer, Moreland Realty, Inc., and acknowledged by Elsa A. Poblador;[36] (*b*) Rafael made a categorical admission that he did not even know who actually paid the taxes to the BIR and that the name of Manzano did not appear in the documents with respect to the payment of the capital gains tax and documentary stamp tax;[37] and (*c*) petitioner knew that Manzano was merely an employee of Metroland, who talked to and negotiated with it in such capacity, and with whom it would not have dealt with had she not been Metroland's employee.[38]

Finally, the CA observed that this is a case of *pari delicto*, as petitioner's predicament would have been avoided if only Rafael sought the permission and approval of the Probate Court prior to the sale of the Wack-Wack Share.[39]

Aggrieved, petitioner sought reconsideration,[40] which the CA denied in a Resolution[41] dated May 26, 2010; hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CA erred in denying petitioner's appeal on the civil liability *ex delicto* of Manzano.

The Court's Ruling

The petition lacks merit.

It is a fundamental rule that "[t]he acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (*a*) the

---

[36] *Id*. at 55.

[37] *Id*. at 56.

[38] *Id*.

[39] *Id*.

[40] Dated October 22, 2009; CA *rollo*, pp. 240-255.

[41] *Rollo*, p. 59. Penned by Associate Justice Antonio L. Villamor with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino concurring.

acquittal is based on reasonable doubt as only preponderance of evidence is required; (*b*) the court declares that the liability of the accused is only civil; and (*c*) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. **However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the [prosecution absolutely failed to prove the guilt of the accused, or the] act or omission from which the civil liability may arise did not exist, or where the accused did not commit the acts or omission imputed to him**."[42]

In the fairly recent case of *Dy v. People*,[43] the Court discussed the concept of civil liability *ex delicto* in *Estafa* cases under paragraph 1 (b), Article 315 of the RPC (with which Manzano was likewise charged), stating that **when the element of misappropriation or conversion is absent, there can be no *Estafa* and concomitantly, the civil liability *ex delicto* does not exist**. Particularly, the Court said:

> Our laws penalize criminal fraud which causes damage capable of pecuniary estimation through *estafa* under Article 315 of the Revised Penal Code. In general, the elements of *estafa* are:
>
> (1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and
>
> (2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.
>
> The essence of the crime is the unlawful abuse of confidence or deceit in order to cause damage. As this Court previously held, "the element of fraud or bad faith is indispensable." Our law abhors the act of defrauding another person by abusing his trust or deceiving him, such that, it criminalizes this kind of fraud.
>
> Article 315 of the Revised Penal Code identifies the circumstances which constitute *estafa*. Article 315, paragraph 1 (b) states that *estafa* is committed by abuse of confidence —

---

[42] *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009). Citations omitted.

[43] G.R. No. 189081, August 10, 2016.

> Art. 315. *Swindling* (*estafa*). — . . . (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

In this kind of *estafa*, **the fraud which the law considers as criminal is the act of misappropriation or conversion**. **When the element of misappropriation or conversion is missing, there can be no *estafa*. In such case, applying the foregoing discussions on civil liability ex delicto, there can be no civil liability as there is no act or omission from which any civil liability may be sourced**. However, when an accused is acquitted because a reasonable doubt exists as to the existence of misappropriation or conversion, then civil liability may still be awarded. This means that, while there is evidence to prove fraud, such evidence does not suffice to convince the court to the point of moral certainty that the act of fraud amounts to *estafa*. As the act was nevertheless proven, albeit without sufficient proof justifying the imposition of any criminal penalty, civil liability exists.[44]

The Court further clarified that "whenever the elements of *estafa* are not established, and that the delivery of any personal property was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case. This is because the civil liability arising from the contract is not civil liability *ex delicto*, which arises from the same act or omission constituting the crime. Civil liability *ex delicto* is the liability sought to be recovered in a civil action deemed instituted with the criminal case."[45]

In this case, the Court agrees with the findings of both the RTC and the CA that the prosecution failed to prove all the elements of *estafa* through misappropriation as defined in, and penalized under, paragraph 1 (b), [Article 315] of the [RPC].[46]

---

[44] *Id*. Citation omitted.

[45] *Id*.

[46] *Rollo,* p. 50.

As the RTC aptly noted, Rafael, as the representative of herein petitioner, very well knew of and concurred with the entire arrangement, including those which had to be made with the BIR. In fact, petitioner itself admitted that it received the full amount of ₱15,200,000.00 – the full amount to which it was entitled to under the terms of the sale of the Wack-Wack Share. For these reasons, petitioner could not claim that it was deceived. Thus, absent the element of fraud, there could be no misappropriation or conversion to speak of that would justify the charge of *Estafa* and, with it, the alleged civil liability *ex delicto*.

More significantly, the CA correctly observed that petitioner's evidence utterly failed to show that Manzano personally received the ₱2,800,000.00 from petitioner with the duty to hold it in trust for or to make delivery to the latter. In fact, Rafael categorically admitted that he did not even know who actually paid the taxes to the BIR, and that Manzano's name did not appear in the documents pertaining to the payment of the capital gains tax and documentary stamp tax.[47] This admission clearly contradicts the disputable presumption under Section 3 (q) of Rule 131 of the Rules of Court, *i.e.*, that the ordinary course of business has been followed, which petitioner adamantly relies on to support its claim.

A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action.[48] It is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts.[49] **However, a presumption is not evidence,**[50] **but merely affects**

---

[47] *Rollo,* p. 54. See also TSN, August 24, 2000, pp. 22-23; and May 2, 2001, pp. 11-12.

[48] *Black's Law Dictionary*, 5th Ed., 1067 citing Uniform Rule 13; NJ Evidence Rule 13.

[49] See *Delgado vda. de Da la Rosa v. Heirs of Marciana Rustia vda. de Damian*, 516 Phil. 130, 145 (2006).

[50] See Riano, *Evidence (The Bar Lecture Series)*, (2009), p. 427, citing *California Evidence Code in Black's Law Dictionary,* 5th Ed., 1167.

the burden of offering evidence.[51] **Under Section 3, Rule 131, disputable presumptions are satisfactory, if uncontradicted, but may be contradicted and overcome by other evidence, as in this case**. Apart from Rafael's admission, petitioner further admitted that: (***a***) Moreland directly paid Metroland the ₱2,800,000.00 in check although it did not actually see and was unaware to whom Moreland gave this check;[52] (***b***) it did not ask Moreland to issue the check for the payment of the taxes directly in the name of the BIR;[53] (***c***) it would not have dealt with Manzano had she not been Metroland's employee;[54] and (***d***) it has several lawyers and an accountant at its disposal, and its representative Rafael is, in fact, in the real estate business and is familiar with brokerage transactions.[55]

With these admissions and under these circumstances, it is thus safe to conclude that the parties deliberately deviated from the ordinary course of business, and that — at the very least — Manzano did not deal with it in bad faith. By and large, petitioner failed to prove even by preponderance of evidence[56] the existence of any act or omission of Manzano that would support its claim

---

[51] See Riano, *Evidence (The Bar Lecture Series)*, (2009), p. 427, citing *1 Wharton's Criminal Evidence, Sec. 64.*

[52] TSN, September 22, 1999, pp. 41-42; and October 26, 2000, p. 4.

[53] TSN, October 26, 2000, pp. 11-12.

[54] TSN, October 26, 2000, pp. 10-12.

[55] TSN, September 22, 1999, pp. 43-44; and August 24, 2000, pp. 2-4 and 13.

[56] Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense. (See *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839, 848 (2013), citing *Aznar v. Citibank, N.A., (Philippines)*, 548 Phil. 218, 230 (2007) and *Jison v. CA*, 350 Phil. 138, 173 (1998); and *Far East Bank & Trust Company v. Chante*, 719 Phil. 221 [2013]).

of civil liability *ex delicto*. In consequence, the present petition must fail.

As a final point, it deserves mentioning that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law are addressed. It is not the Court's function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). The Court is confined to the review of errors of law that may have been committed in the judgment under review.[57] "The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive."[58]

All told, the Court finds no reversible error in the CA ruling denying petitioner's appeal as its findings and conclusion are well supported by the facts and are founded in law.

WHEREFORE, the petition is **DENIED**. The Decision dated September 30, 2009 and the Resolution dated May 26, 2010 of the Court of Appeals in CA-G.R. CV No. 78891 are hereby **AFFIRMED**.

SO ORDERED.

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

---

[57] See *Far Eastern Surety and Insurance Co, Inc. v. People of the Philippines*, 721 Phil. 760, 769 (2013).

[58] See *id*. at 770, citing *Chan v. CA*, 144 Phil. 678, 684 (1970), in *Remalante v. Tibe*, 241 Phil. 930, 935 (1988).

SPECIAL THIRD DIVISION

[G.R. No. 195876. June 19, 2017]

PILIPINAS SHELL PETROLEUM CORPORATION, *petitioner, vs.* **COMMISSIONER OF CUSTOMS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRECEDENT; DEFINED AS A JUDICIAL DECISION THAT SERVES AS A RULE FOR FUTURE DETERMINATION IN SIMILAR OR SUBSTANTIALLY SIMILAR CASES; THUS THE FACTS AND CIRCUMSTANCES BETWEEN THE JURISPRUDENCE RELIED UPON AND THE PENDING CONTROVERSY SHOULD NOT DIVERGE ON MATERIAL POINTS; DOCTRINE LAID DOWN IN *CHEVRON* NOT APPLICABLE AS THE FACTS AND CIRCUMSTANCES THEREIN ARE NOT IN ALL FOURS WITH THOSE OBTAINING IN THE CASE AT BAR.— The Omnibus Motion is anchored primarily on the alleged applicability of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs* (*Chevron*) to the case at bar. However, the Court desisted from applying the doctrine laid down in *Chevron* considering that the facts and circumstances therein are not in all fours with those obtaining in the instant case. Thus, *Chevron* is not a precedent to the case at bar. A "precedent" is defined as a judicial decision that serves as a rule for future determination in similar or substantially similar cases. Thus, the facts and circumstances between the jurisprudence relied upon and the pending controversy should not diverge on material points. But as clearly explained in the assailed December 5, 2016 Decision, the main difference between *Chevron* and the case at bar lies in the attendance of fraud. In *Chevron*, evidence on record established that Chevron committed fraud in its dealings. On the other hand, proof that petitioner Pilipinas Shell Petroleum Corporation (Pilipinas Shell) was just as guilty was clearly wanting. Simply, there was no finding of fraud on the part of petitioner in the case at bar. Such circumstance is too significant that it renders *Chevron* indubitably different from and cannot,

therefore, serve as the jurisprudential foundation of the case at bar.

2. ID.; EVIDENCE; OFFER AND OBJECTION; OFFER OF EVIDENCE; THE MERE FACT THAT A PARTICULAR DOCUMENT IS IDENTIFIED AND MARKED AS AN EXHIBIT DOES NOT MEAN THAT IT HAS ALREADY BEEN OFFERED AS PART OF THE EVIDENCE, AS ANY EVIDENCE WHICH A PARTY DESIRES TO SUBMIT FOR THE CONSIDERATION OF THE COURT MUST FORMALLY BE OFFERED BY THE PARTY; OTHERWISE, IT IS EXCLUDED AND REJECTED. — [It was claimed] that fraud was committed by Pilipinas Shell when it allegedly deliberately incurred delay in filing its Import Entry and Internal Revenue Declaration in order to avail of the reduced tariff duty on oil importations, from ten percent (10%) to three percent (3%), upon the effectivity of Republic Act No. 8180 (RA 8180), otherwise known as the Oil Deregulation Law. [T]he February 2, 2011 Memorandum [was cited] to support the allegation of fraud, but as exhaustively discussed in Our December 5, 2016 Decision, **the document was never formally offered as evidence before the Court of Tax Appeals, and is, therefore, bereft of evidentiary value. Worse, it was not even presented during trial and no witness identified the same.** What value can the Court then accord to the document? The Court finds its answer in *Heirs of Pasag v. Sps. Parocha*, which teaches that: x x x **Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence.** Neither can such unrecognized proof be assigned any evidentiary weight and value. x x x. **The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.**

3. ID.; ID.; ID.; THE COURT CANNOT RELY ON SPECULATIONS, CONJECTURES OR GUESSWORK, BUT MUST DEPEND UPON COMPETENT PROOF AND ON THE BASIS OF THE BEST EVIDENCE OBTAINABLE UNDER THE CIRCUMSTANCES.— [N]o scintilla of proof

was ever offered in evidence by respondent Commissioner of Customs to substantiate the claim that Pilipinas Shell acted in a fraudulent manner. **At best, the allegation of fraud on the part of Pilipinas Shell is mere conjecture and purely speculative.** Settled is the rule that a court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances. We emphasize that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof.

4. TAXATION; THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (TCC); SECTION 1603 THEREOF; FINALITY OF LIQUIDATION; THE ATTENDANCE OF FRAUD WOULD REMOVE THE CASE FROM THE AMBIT OF THE STATUTE OF LIMITATIONS, AND WOULD CONSEQUENTLY ALLOW THE GOVERNMENT TO EXERCISE ITS POWER TO ASSESS AND COLLECT DUTIES EVEN BEYOND THE ONE-YEAR PRESCRIPTIVE PERIOD, RENDERING IT VIRTUALLY IMPRESCRIPTIBLE.— Pursuant to [Section 1603 of the Tariff and Customs Code of the Philippines (TCC)], the attendance of fraud would remove the case from the ambit of the statute of limitations, and would consequently allow the government to exercise its power to assess and collect duties even beyond the one-year prescriptive period, rendering it virtually imprescriptible. In the case at bar, petitioner Pilipinas Shell filed its Import Entry and Internal Revenue Declaration (IEIRD) and paid the import duty of its shipments in the amount of ₱11,231,081 on May 23, 1996. However, **it only received a demand letter from public respondent on July 27, 2000, or more than four (4) years later.** By this time, the one-year prescriptive period had already elapsed, and the government had already been barred from collecting the deficiency in petitioner's import duties for the covered shipment of oil.

5. ID.; ID.; SECTION 1801 (B) THEREOF; ABANDONMENT; FOR THE DOCTRINE OF *IPSO FACTO* ABANDONMENT TO APPLY, THE FAILURE TO FILE THE IMPORT ENTRY AND INTERNAL REVENUE DECLARATION (IEIRD) WITHIN 30 DAYS FROM ENTRY MUST BE

PRECEDED BY DUE NOTICE DEMANDING COMPLIANCE.— The absence of fraud not only allows the finality of the liquidations, it also calls for the strict observance of the requirements for the doctrine of *ipso facto* abandonment to apply. x x x. As expressly provided in Sec. 1801(b) of the TCC, **the failure to file the IEIRD within 30 days from entry is not the only requirement for the doctrine of *ipso facto* abandonment to apply**. The law categorically requires that this be preceded by **due notice** demanding compliance. To recapitulate, the notice in this case was only served upon petitioner four (4) years after it has already filed its IEIRD. Under this circumstance, the Court cannot rule that due notice was given, for when public respondent served the notice demanding payment from petitioner, it no longer had the right to do so. By that time, the prescriptive period for liquidation had already elapsed, and the assessment against petitioner's shipment had already become final and conclusive. Consequently, Sec. 1801(b) failed to operate in favor of the government for failure to demand payment for the discrepancy prior to the finality of the liquidation. The government cannot deem the imported articles as abandoned without due notice.

6. **ID.; ID.; ID.; ID.; ID.; ABSENT FRAUD, THE STATUTORILY REQUIRED DUE NOTICE SHOULD BE TIMELY SERVED UPON THE IMPORTER BEFORE THE IMPORTED OIL SHIPMENTS COULD BE DEEMED ABANDONED. —** Public respondent cannot harp on the *Chevron* ruling to excuse compliance from the due notice requirement before the imported articles can be deemed abandoned, for to do so would only downplay the Court's finding anent the non-attendance of fraud. To be clear, the element of fraud in *Chevron* was a key ingredient on why notice was deemed unnecessary: x x x. Hence, it does not suffice that petitioner is a multinational, large scale importer presumed to be familiar with importation rules and procedures for the *ipso facto* abandonment doctrine to apply. **Under the peculiar facts and circumstances** of *Chevron*, **the existence of fraud was the primary element established to warrant the application of the doctrine.** Without this element, *Chevron* cannot be treated at par with the case at bar. The statutorily required due notice should still have been timely served upon petitioner before the imported oil shipments could have been deemed abandoned.

7. ID.; ID.; ID.; ID.; CUSTOMS MEMORANDUM ORDER NO. (CMO) 15-94, OTHERWISE KNOWN AS THE REVISED GUIDELINES ON ABANDONMENT; THE *IPSO FACTO* ABANDONMENT DOCTRINE CANNOT OPERATE IN THE CASE AT BAR DUE TO ABSENCE OF FRAUD ON THE PART OF THE PETITIONER.— CMO 15-94 is an executive edict that implements Section 1801(b) of the TCC. It is an interpretation given to a statute by those charged with its execution, and is intended for the guidance of subordinate executive officials to promote a more efficient and cost effective administration of the BOC. Unless the rule appears to be clearly unreasonable or arbitrary, it is entitled to the greatest weight by the Court, if not accorded the similar force and binding effect of law. Coupled with the earlier quotation from *Chevron*, it becomes abundantly clear that **the notice requirement as mandated in CMO 15-94 cannot be excused unless fraud is established**. Resultantly, fraud being absent on the part of petitioner Pilipinas Shell, the *ipso facto* abandonment doctrine cannot operate within the factual milieu of the instant case. Be that as it may, in view of the substantial differences between the facts of *Chevron* and the peculiarities of the instant case, and just as *Chevron* was justified "*under the peculiar facts and circumstances*" obtaining therein, the Decision dated December 5, 2016 in the case at bar ought to be considered as a judgment *pro hac vice*.

PERALTA, *J.*, *dissenting opinion*:

1. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (TCC); SECTION 1603 THEREOF; FINALITY OF LIQUIDATION; NOT APPLICABLE WHERE THE BUREAU OF CUSTOMS (BOC) IS NO LONGER TRYING TO ASSESS AND COLLECT DUTIES DUE ON IMPORTATION, BUT DEMANDS FROM THE IMPORTER THE PAYMENT OF THE DUTIABLE VALUE OF THE LATTER'S IMPORTATION WHICH WAS DEEMED ABANDONED AND BECAME, *IPSO FACTO*, THE PROPERTY OF THE GOVERNMENT.— Petitioner insists on the applicability of the provisions of Section 1603 of the Tariff and Customs Code of the Philippines (*TCCP*) to the present case. However, petitioner should be reminded that Section 1603 of the TCCP, as aptly titled, refers to the finality

of liquidation. As previously held by this Court in a separate case, liquidation is the final computation and ascertainment by the Collector of Customs of the duties due on imported merchandise based on official reports as to the quantity, character and value thereof, and the Collector of Customs' own finding as to the applicable rate of duty. Thus, liquidation means the assessment or determination of whether duties should be imposed on imported articles and, if so, the amount thereof. The finality of the liquidation contemplated under Section 1603 of the TCCP is meant to limit the taxing powers of the State by providing that, after the lapse of one year from the date of final payment of duties, the government is already precluded from making further determination or adjustment of duties on the imported articles. In the present case, there is no liquidation to speak of as the BOC is no longer trying to assess and collect duties due on petitioner's importation. What the BOC demands from petitioner is the payment of the dutiable value of the latter's oil importation which was deemed abandoned and became, *ipso facto*, the property of the government. In filing an action for the recovery of the dutiable value of the subject oil importation, the government is exercising not its power to assess and collect duties and taxes but its right of ownership over the abandoned imported articles. Hence, Section 1603 of the TCCP is not applicable in the present case.

2. ID.; ID.; ID.; ID.; THE EXISTENCE OR ABSENCE OF FRAUD BECOMES IMMATERIAL WHERE WHAT THE GOVERNMENT SEEKS IS THE RECOVERY OF THE VALUE OF THE ABANDONED IMPORTATION.— [S]ince what the government seeks is the recovery of the value of the subject abandoned oil importation, the CTA Former *En Banc* correctly held that the existence or absence of fraud becomes immaterial. Fraud is relevant only in cases of assessment and collection of taxes and duties on the ground that its existence will not preclude the government from making further liquidation or assessment of duties due on imported articles.

3. ID.; ID.;ID.; ID.; THE ABSENCE OF THE COMMERCIAL DOCUMENTS DOES NOT JUSTIFY THE IMPORTER'S NON-COMPLIANCE WITH THE MANDATORY AND NON-EXTENDIBLE 30-DAY PERIOD FOR THE FILING OF ITS IMPORT ENTRY AND INTERNAL REVENUE DECLARATION (IEIRD); PETITIONER INTENDED TO

DEFRAUD THE GOVERNMENT OF ITS LAWFUL REVENUE.—As in *Chevron*, the circumstances surrounding petitioner's delayed filing of its IEIRD indicate fraud as evidence shows that there is an apparent preconceived design or intent to evade the payment of the correct customs duties prevailing at the time of arrival of the subject imported crude oil. x x x. Petitioner's excuse of discrepancy in the amount of crude oil actually delivered to it and the figure stated in the Bill of Lading as well as the absence of supporting documents as the cause of its delay in filing the required IEIRD is unavailing. x x x. Even assuming that there was indeed a delay in the arrival of the commercial invoices which are supposedly necessary to accurately reflect the volume of crude oil received by petitioner, considering the serious consequences of delayed filing, the absence of these documents should not have prevented petitioner from complying with the mandatory and non-extendible 30-day period for the filing of its IEIRD. If petitioner is in good faith, the least that it should have done was to file the IEIRD on the basis of the available documents and inform the BOC of the possibility of amending the IEIRD upon arrival of the documents needed to make accurate and complete entries. From the foregoing, it becomes evident that petitioner, for all intents and purposes, intended to defraud the government of its lawful revenue.

4. **ID.; ID.; ID.; ID.; THE FAILURE OF THE IMPORTER TO FILE THE REQUIRED ENTRIES WITHIN A NON-EXTENDIBLE PERIOD OF THIRTY DAYS FROM DATE OF DISCHARGE OF THE LAST PACKAGE FROM THE CARRYING VESSEL CONSTITUTED IMPLIED ABANDONMENT OF ITS IMPORTATIONS; THUS, FROM THE PRECISE MOMENT THAT THE NON-EXTENDIBLE THIRTY-DAY PERIOD LAPSED, THE ABANDONED SHIPMENTS BECAME THE PROPERTY OF THE GOVERNMENT; PRINCIPLE ABANDONED IN THE CASE AT BAR.—** Contrary to the petitioner's argument in its Opposition to the Omnibus Motion for Reconsideration, the instant *ponencia* is in conflict with this Court's ruling in *Chevron*. Even a quick reading of this Court's concluding statements in *Chevron* readily shows the basic principle established therein. Thus, x x x: **CONCLUSION Petitioner's failure to file the required entries within a non-extendible period of thirty days from date of discharge of the last**

package from the carrying vessel constituted implied abandonment of its oil importations. This means that from the precise moment that the non-extendible thirty-day period lapsed, the abandoned shipments were deemed (that is, they became) the property of the government. Therefore, when petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government. x x x. The contrary ruling of the majority, as expressed in the ponencia, is a clear abandonment of the established principle in *Chevron*; thus, the need to refer this case to the Court *en banc*.

APPEARANCES OF COUNSEL

Cruz Marcelo & Tenefrancia for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

Acting on the Omnibus Motion (For Reconsideration and Referral to the Court En banc) dated January 20, 2017 filed by public respondent Commissioner of Customs, the Court **DENIES** the same for lack of merit. The arguments raised by respondent in this pending incident are the very same arguments raised in the petition, which have already been evaluated, passed upon, and considered in the assailed December 5, 2016 Decision. Ergo, the Court rejects these arguments on the same grounds discussed in the challenged Decision, and denies, as a matter of course, the pending motion.

Unlike in Chevron, petitioner herein is not guilty of fraud

The Omnibus Motion is anchored primarily on the alleged applicability of *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*[1] (*Chevron*) to the case at bar. However,

[1] 583 Phil. 706 (2008).

the Court desisted from applying the doctrine laid down in *Chevron* considering that the facts and circumstances therein are not in all fours with those obtaining in the instant case. Thus, Chevron is not a precedent to the case at bar.

A "precedent" is defined as a judicial decision that serves as a rule for future determination in similar or substantially similar cases. Thus, the facts and circumstances between the jurisprudence relied upon and the pending controversy should not diverge on material points. But as clearly explained in the assailed December 5, 2016 Decision, the main difference between *Chevron* and the case at bar lies in the attendance of fraud.

In *Chevron*, evidence on record established that Chevron committed fraud in its dealings. On the other hand, proof that petitioner Pilipinas Shell Petroleum Corporation (Pilipinas Shell) was just as guilty was clearly wanting. Simply, there was no finding of fraud on the part of petitioner in the case at bar. Such circumstance is too significant that it renders *Chevron* indubitably different from and cannot, therefore, serve as the jurisprudential foundation of the case at bar.

In his dissent, Associate Justice Diosdado M. Peralta (Justice Peralta) claims that fraud was committed by Pilipinas Shell when it allegedly deliberately incurred delay in filing its Import Entry and Internal Revenue Declaration in order to avail of the reduced tariff duty on oil importations, from ten percent (10%) to three percent (3%), upon the effectivity of Republic Act No. 8180 (RA 8180), otherwise known as the Oil Deregulation Law. Justice Peralta cites the February 2, 2011 Memorandum to support the allegation of fraud, but as exhaustively discussed in Our December 5, 2016 Decision, **the document was never formally offered as evidence before the Court of Tax Appeals, and is, therefore, bereft of evidentiary value. Worse, it was not even presented during trial and no witness identified the same.**

What value can the Court then accord to the document? The Court finds its answer in *Heirs of Pasag v. Sps. Parocha*,[2] which teaches that:

[2] G.R. No. 155483, April 27, 2007, 522 SCRA 410.

x x x **Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence.** Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. **The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.** (emphasis added)

Resultantly, no scintilla of proof was ever offered in evidence by respondent Commissioner of Customs to substantiate the claim that Pilipinas Shell acted in a fraudulent manner. **At best, the allegation of fraud on the part of Pilipinas Shell is mere conjecture and purely speculative.** Settled is the rule that a court cannot rely on speculations, conjectures or guesswork, but must depend upon competent proof and on the basis of the best evidence obtainable under the circumstances. We emphasize that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility and proof.[3]

The absence of fraud and its effects on the one-year prescriptive period, and on the due notice requirement prior to *ipso facto* abandonment

As extensively discussed in the assailed Decision, whether or not petitioner Pilipinas Shell defrauded the public respondent becomes pivotal because of Section 1603 of the Tariff and Customs Code of the Philippines (TCC), which reads:

---

[3] *Lagon v. Hooven Comalco Industries, Inc.*, G.R No. 135657, January 17, 2001, 349 SCRA 363.

Section 1603. *Finality of Liquidation*. When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or **settlements of duties will, after the expiration of one (1) year, from the date of the final payment of duties, in the absence of fraud** or protest or compliance audit pursuant to the provisions of this Code, **be final and conclusive upon all parties**, unless the liquidation of the import entry was merely tentative. (emphasis added)

Pursuant to the above-quoted provision, the attendance of fraud would remove the case from the ambit of the statute of limitations, and would consequently allow the government to exercise its power to assess and collect duties even beyond the one-year prescriptive period, rendering it virtually imprescriptible.[4]

In the case at bar, petitioner Pilipinas Shell filed its Import Entry and Internal Revenue Declaration (IEIRD) and paid the import duty of its shipments in the amount of ₱11,231,081 on May 23, 1996. However, **it only received a demand letter from public respondent on July 27, 2000, or more than four (4) years later.** By this time, the one-year prescriptive period had already elapsed, and the government had already been barred from collecting the deficiency in petitioner's import duties for the covered shipment of oil.

In an attempt to remove the instant case from the purview of the provision, Justice Peralta and the respondent claim that the government is no longer collecting tariff duties. Rather, it is exercising its ownership right over the shipments, which were allegedly deemed abandoned by petitioner because of the latter's failure to timely file the IEIRD. It is their postulation then that Sec. 1603 cannot find application in the case at bar.

We respectfully disagree.

The absence of fraud not only allows the finality of the liquidations, it also calls for the strict observance of the requirements for the doctrine of *ipso facto* abandonment to apply. Sec. 1801 of the TCC pertinently provides:

---

[4] *See* Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. to the December 5, 2016 Decision.

Section 1801. Abandonment, Kinds and Effect of — An imported article is **deemed abandoned** under any of the following circumstances:

x x x x x x x x x

b. When the owner, importer, consignee or interested party **after due notice**, fails to file an entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within fifteen (15) days, which shall not likewise be extendible, from the date of posting of the notice to claim such importation. (emphasis supplied)

As expressly provided in Sec. 1801(b) of the TCC, **the failure to file the IEIRD within 30 days from entry is not the only requirement for the doctrine of *ipso facto* abandonment to apply**. The law categorically requires that this be preceded by **due notice** demanding compliance.

To recapitulate, the notice in this case was only served upon petitioner four (4) years after it has already filed its IEIRD. Under this circumstance, the Court cannot rule that due notice was given, for when public respondent served the notice demanding payment from petitioner, it no longer had the right to do so. By that time, the prescriptive period for liquidation had already elapsed, and the assessment against petitioner's shipment had already become final and conclusive. Consequently, Sec. 1801(b) failed to operate in favor of the government for failure to demand payment for the discrepancy prior to the finality of the liquidation. The government cannot deem the imported articles as abandoned without due notice.

Public respondent cannot harp on the *Chevron* ruling to excuse compliance from the due notice requirement before the imported articles can be deemed abandoned, for to do so would only downplay the Court's finding anent the non-attendance of fraud. To be clear, the element of fraud in *Chevron* was a key ingredient on why notice was deemed unnecessary:[5]

---

[5] *Supra* note 1.

Under the peculiar facts and circumstances of this case, due notice was not necessary. The shipments arrived in 1996. The IEDs and IEIRDs were also filed in 1996. However, respondent discovered the fraud which attended the importations and their subsequent release from the DOC's custody only in 1999. Obviously, the situation here was not an ordinary case of abandonment wherein the importer merely decided not to claim its importations. Fraud was established against petitioner; it colluded with the former District Collector. Because of this, the scheme was concealed from respondent. The government was unable to protect itself until the plot was uncovered. The government cannot be crippled by the malfeasance of its officials and employees. Consequently, it was impossible for respondent to comply with the requirements under the rules.

By the time respondent learned of the anomaly, the entries had already been belatedly filed and the oil importations released and presumably used or sold. It was a *fait accompli*. **Under such circumstances, it would have been against all logic to require respondent to still post an urgent notice to file entry before declaring the shipments abandoned.** (emphasis added)

Hence, it does not suffice that petitioner is a multinational, large scale importer presumed to be familiar with importation rules and procedures for the *ipso facto* abandonment doctrine to apply. **Under the peculiar facts and circumstances** of *Chevron*, **the existence of fraud was the primary element established to warrant the application of the doctrine.** Without this element, *Chevron* cannot be treated at par with the case at bar. The statutorily required due notice should still have been timely served upon petitioner before the imported oil shipments could have been deemed abandoned.

Under public respondent's Customs Memorandum Order No. (CMO) 15-94, otherwise known as the Revised Guidelines on Abandonment in force at that time, due notice is served upon the importer through the following measures:

SUBJECT: REVISED GUIDELINES ON ABANDONMENT

x x x x x x x x x

B. ADMINISTRATIVE PROVISIONS

x x x x x x x x x

B.2 Implied abandonment occurs when:

B.2.1 The owner, importer, consignee, interested party or his authorized broker/representative, after due notice, fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of last package from the carrying vessel or aircraft.

x x x x x x x x x

Due notice to the consignee/importer/owner/interested party shall be by means of posting of a notice to file entry at the Bulletin Board seven (7) days prior to the lapse of the thirty (30) day period by the Entry Processing Division listing the consignees who/which have not filed the required import entries as of the date of the posting of the notice **and notifying them of the arrival of their shipment**, the name of the carrying vessel/aircraft, Voy. No. Reg. No. and the respective B/L No./AWB No., with a warning, as shown by the attached form, entitled: URGENT NOTICE TO FILE ENTRY which is attached hereto as Annex A and made an integral part of this Order.

x x x x x x x x x

C. OPERATIONAL PROVISIONS

x x x x x x x x x

C.2 On Implied Abandonment:

C.2.1 When no entry is filed

C.2.1.1 **Within twenty-four (24) hours after the completion of the boarding formalities**, the Boarding Inspector must submit the **manifests** to the Bay Service or similar office so that the Entry Processing Division copy may be put to use by said office as soon as possible.

C..2.1.2 **Within twenty-four (24) hours after the completion of the unloading of the vessel/aircraft, the Inspector assigned in the vessel/aircraft**, shall issue a **certification** addressed to the Collector of Customs (Attention: Chief, Entry Processing Division), copy furnished Chief, Data Monitoring Unit, specifically stating the time and date of discharge of the last package from the vessel/aircraft assigned to him. Said certificate must be encoded by Data Monitoring Unit in the Manifest Clearance System.

C.2.1.3 **Twenty-three (23) days after the discharge of the last package** from the carrying vessel/aircraft, the Chief, Data Monitoring Unit shall cause the printing of the **URGENT NOTICE TO FILE ENTRY** in accordance with the attached form, Annex A hereof, sign the URGENT NOTICE and **cause its posting continuously for seven (7) days at the Bulletin Board for the purpose until the lapse of the thirty (30) day period**.

C.2.1.4 The Chief, Data Monitoring Unit, shall **submit a weekly report** to the Collector of Customs with a listing by vessel, Registry Number of shipments/ importations which shall be deemed abandoned for failure to file entry within the prescribed period and **with certification** that per records available, the thirty (30) day period within which to file the entry therefore has lapsed without the consignee/importer filing the entry and that the proper posting of notice as required has been complied with.

x x x x x x x x x

C.2.1.5 Upon receipt of the report, the Collector of Customs shall issue an **order** to the Chief, Auction and Cargo Disposal Division, **to dispose of the shipment** enumerated in the report prepared by the Chief, Data Monitoring Unit on the ground that those are abandoned and *ipso facto* deemed the property of the Government to be disposed of as provided by law. (emphasis supplied)

CMO 15-94 is an executive edict that implements Section 1801(b) of the TCC. It is an interpretation given to a statute by those charged with its execution, and is intended for the guidance of subordinate executive officials to promote a more efficient and cost effective administration of the BOC. Unless the rule appears to be clearly unreasonable or arbitrary, it is entitled to the greatest weight by the Court,[6] if not accorded the similar force and binding effect of law.[7]

---

[6] *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*, G.R. No. 135992, January 31, 2006, 481 SCRA 163.

[7] *ABAKADA Guro Partylist v. Purisima*, G.R. No. 166795, August 14, 2008.

Coupled with the earlier quotation from *Chevron*, it becomes abundantly clear that **the notice requirement as mandated in CMO 15-94 cannot be excused unless fraud is established**. Resultantly, fraud being absent on the part of petitioner Pilipinas Shell, the *ipso facto* abandonment doctrine cannot operate within the factual milieu of the instant case. Be that as it may, in view of the substantial differences between the facts of *Chevron* and the peculiarities of the instant case, and just as *Chevron* was justified "*under the peculiar facts and circumstances*" obtaining therein, the Decision dated December 5, 2016 in the case at bar ought to be considered as a judgment *pro hac vice*.

WHEREFORE, premises considered, the Court **DENIES WITH FINALITY** the Omnibus Motion (For Reconsideration and Referral to the Court En banc) dated January 20, 2017 filed by public respondent Commissioner of Customs for lack of merit.

No further pleadings or motions will be entertained.

Let entry of judgment be issued.

SO ORDERED.

Reyes and *Tijam, JJ.,* concur.

Peralta, J., see dissenting opinion.

Jardeleza, J., joins the dissent of *J.* Peralta.

DISSENTING OPINION

PERALTA, *J.*:

This treats of the Omnibus Motion filed by respondent, as represented by the Office of the Solicitor General (*OSG*), praying that: (1) the present case be referred to the Court *En Banc* for resolution; (2) the Decision of this Court dated December 5, 2016 be reversed and set aside; and (3) the May 13, 2010 Decision and February 22, 2011 Resolution of the Court of Tax Appeals Former *En Banc* be affirmed.

Respondent raises the following contentions:

The government's ownership of the abandoned article in the case at bar is absolute and petitioner could not have reclaimed title over the same at the time of disposition. As such, being the owner of the abandoned article, the government is entitled to its full value

The extent of the prescriptive period under Section 1603 of the TCCP is limited only to the final determination of the exact amound of duties on imported articles. It does not extend to the recovery of abandoned articles under Sections 1801 and 1802 of the TCCP.

In view of the conflicting rulings in Chevron and in the instant case, the subject petition should be referred to the Court En Banc.[1]

I vote to grant the Omnibus Motion.

As I have previously discussed in my dissenting opinion to the majority Decision, the supposed duty of the government, through the Bureau of Customs (*BOC*), to assess and collect customs duties within a period of one year, in the absence of fraud, becomes immaterial once an importer fails to file the required import entries within the non-extendible period of thirty (30) days from the date of discharge of the last package from the carrying vessel. This is so because after the lapse of the said 30-day period, the imported articles are deemed impliedly abandoned and, *ipso facto*, becomes the property of the government. This is precisely the logic behind the reason why the BOC, in the instant case, is not seeking to collect customs duties from petitioner in the exercise of its power to tax under the law. Instead, it seeks to recover the dutiable value of the oil importations to vindicate its right as the owner of the subject imported oil products which were appropriated by petitioner despite having abandoned the same.

Petitioner insists on the applicability of the provisions of Section 1603 of the Tariff and Customs Code of the Philippines (*TCCP*) to the present case. However, petitioner should be reminded that Section 1603 of the TCCP, as aptly titled, refers to the finality of liquidation. As previously held by this Court

[1] *Rollo*, pp. 1325, 1333 and 1341.

in a separate case, liquidation is the final computation and ascertainment by the Collector of Customs of the duties due on imported merchandise based on official reports as to the quantity, character and value thereof, and the Collector of Customs' own finding as to the applicable rate of duty.[2] Thus, liquidation means the assessment or determination of whether duties should be imposed on imported articles and, if so, the amount thereof. The finality of the liquidation contemplated under Section 1603 of the TCCP is meant to limit the taxing powers of the State by providing that, after the lapse of one year from the date of final payment of duties, the government is already precluded from making further determination or adjustment of duties on the imported articles. In the present case, there is no liquidation to speak of as the BOC is no longer trying to assess and collect duties due on petitioner's importation. What the BOC demands from petitioner is the payment of the dutiable value of the latter's oil importation which was deemed abandoned and became, *ipso facto*, the property of the government. In filing an action for the recovery of the dutiable value of the subject oil importation, the government is exercising not its power to assess and collect duties and taxes but its right of ownership over the abandoned imported articles. Hence, Section 1603 of the TCCP is not applicable in the present case. Thus, as correctly posited by the OSG:

x x x x x x x x x

x x x at the liquidation stage, one of two things may happen: (a) articles will enter and pass free of duty, or (b) final adjustment of duties will be made. In other words, there will be a final determination of whether duties should be paid as well as the amount thereof.

51. After the expiration of one (1) year from the date of the final payment of duties, such entry and passage free of duty or settlement of duties shall be final and conclusive upon all parties. This means that the exact amount of duties can no longer be corrected, and the Collector of Customs is no longer authorized to re-liquidate entries and collect additional charges or make refunds. The law, however, provides for exceptions, one of which is the presence of fraud.

---

[2] *Pilipinas Shell Petroleum Corporation v. Republic of the Philippines*, 571 Phil. 418, 424-425 (2008).

x x x x x x x x x

53. x x x, the prescriptive period under Section 1603 of the TCCP can be essentially characterized as a limitation on the taxing powers of the government. It aims to ensure that the determination of the amount of duty can no longer be disturbed after one (1) year. Indeed, if any errors were committed that resulted in under- or over-collection of duties, all parties are barred from correcting it anymore after the prescriptive period.

54. Thus, respondent agrees with this Honorable Court's Third Division that the government is precluded from disturbing the settlement of duties after the expiration of the prescriptive period. The government can no longer look into any errors, including anything that may arise from the filing of the necessary documents, for the purpose of determining the amount of duties.

55. Respondent, however, takes exception to the ruling of this Honorable Court's Third Division that said prescriptive period extends to the determination of the timeliness of filing of import entries for the purpose of determining whether an article has been deemed abandoned.

56. As discussed above, an article is deemed abandoned when the importer fails to file an entry within a non-extendible period of thirty (30) days from the date of discharge of the package from the vessel. Such abandoned article shall *ipso facto* be deemed the property of the Government. Nothing in the law requires that such ownership shall be subject to any other condition, much less Section 1603 of the TCCP which only applies to the finality of liquidation of duties.

57. By virtue of the transfer of ownership of the abandoned article from petitioner to the government, the petitioner unjustly enriched itself when it appropriated the same at the expense of the government. Thus, it is but just that petitioner be held liable not for a mere tax deficiency — which cannot be re-liquidated beyond the period conferred by Section 1603 — but for the value of government property which it consumed and disposed without legal authority.

58. It bears, emphasis that when a government property is unlawfully appropriated and the government desires to recover its value, the government is merely exercising its right of ownership. Considering that in the instant case, respondent is demanding the value of a government property which was abandoned and appropriated by the petitioner — as opposed to the duties due thereon — Section 1603 of the TCCP does not apply. There is no rhyme or reason for applying

the prescriptive period under Section 1603 of the TCCP, which is essentially a limitation on the state's exercise of its taxing powers.

x x x x x x x x x[3]

Consequently, since what the government seeks is the recovery of the value of the subject abandoned oil importation, the CTA Former *En Banc* correctly held that the existence or absence of fraud becomes immaterial. Fraud is relevant only in cases of assessment and collection of taxes and duties on the ground that its existence will not preclude the government from making further liquidation or assessment of duties due on imported articles.

In any case, I take exception to the findings of the majority that petitioner did not commit fraud. It bears to point out that the CTA First Division's finding of fraud was based on the February 2, 2011 Memorandum issued by Special Investigator II Domingo B. Almeda and Special Investigator III Nemesio C. Magno, Jr. of the Customs Intelligence & Investigation Service — Investigation and Prosecution Division (*CIIS-IPD*) of the Bureau of Customs. Pertinent portions of the said Memorandum read, thus:

> It is worth to mention at this point that the investigation has established conspiracy to commit fraud against the government, between the former District Collector of the Port of Batangas and Messrs. Casabal and Cabrera of Caltex and Mr. Marasigan of Shell.
>
> The records show that Caltex and Shell bided their time to file their import entries after the 30-day period has prescribed at 3% rate of duty. The District Collector, despite being informed by his subordinates about the lapse of the prescribed period of 30 days allowed the acceptance of the entry and the collection of duty based on the declared rate despite the fact that the Law cited earlier does not grant him such authority.
>
> Obviously, the District Collector, in conspiracy with the above-named officials of Caltex and Shell acted without authority or abused his authority by giving undue benefits to the importers by allowing the processing, payment and subsequent release of the shipments to the damage and prejudice of the government who, under the law is already the owner of the shipments valued at Php2,176,155,929.00

---

[3] *Rollo*, pp. 1335-1337.

which was allowed to be withdrawn by the importers after paying meager amounts of duties and taxes.[4]

This is the same document relied upon by this Court in *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*[5] when it ruled that *Chevron* was, likewise, guilty of fraud, although, in the presently assailed Decision, the majority disregarded this piece of evidence.

As in *Chevron*, the circumstances surrounding petitioner's delayed filing of its IEIRD indicate fraud as evidence shows that there is an apparent preconceived design or intent to evade the payment of the correct customs duties prevailing at the time of arrival of the subject imported crude oil. Why would petitioner delay the filing of its IEIRD and run the risk of having its oil importation deemed abandoned if not for its desire to evade the payment of the correct amount of duties on the said importation? Petitioner's excuse of discrepancy in the amount of crude oil actually delivered to it and the figure stated in the Bill of Lading as well as the absence of supporting documents as the cause of its delay in filing the required IEIRD is unavailing. In this respect, the CTA First Division ruled as follows:

x x x x x x x x x

The Court finds petitioner's excuses, that the causes for the delay in the filing of IEIRD are delay in the arrival of the commercial invoice; and the necessity to correct an error in the volume of crude oil received by Petitioner, implausible. Records show that two Bills of Lading were simultaneously issued on March 5, 1996 for the carriage of Arab light crude oil. One Bill of Lading was for 1,880,057 US barrels, while the other Bill of Lading was for 104,448 US barrels. Thus, the net of imported crude oil can be easily computed as 1,984,505 US barrels. The Bills of Lading should have been submitted as supporting document[s], together with the IEIRD for the determination of the correct amount of customs duty which petitioner should pay for its importation.[6]

---

[4] *Id.* at 352.

[5] 583 Phil. 706 (2008).

[6] *Rollo*, p. 350.

Even assuming that there was indeed a delay in the arrival of the commercial invoices which are supposedly necessary to accurately reflect the volume of crude oil received by petitioner, considering the serious consequences of delayed filing, the absence of these documents should not have prevented petitioner from complying with the mandatory and non-extendible 30-day period for the filing of its IEIRD. If petitioner is in good faith, the least that it should have done was to file the IEIRD on the basis of the available documents and inform the BOC of the possibility of amending the IEIRD upon arrival of the documents needed to make accurate and complete entries. From the foregoing, it becomes evident that petitioner, for all intents and purposes, intended to defraud the government of its lawful revenue.

As to respondent's third contention, contrary to the petitioner's argument in its Opposition to the Omnibus Motion for Reconsideration, the instant *ponencia* is in conflict with this Court's ruling in *Chevron*. Even a quick reading of this Court's concluding statements in *Chevron* readily shows the basic principle established therein. Thus, I quote:

CONCLUSION

Petitioner's failure to file the required entries within a non-extendible period of thirty days from date of discharge of the last package from the carrying vessel constituted implied abandonment of its oil importations. This means that from the precise moment that the non-extendible thirty-day period lapsed, the abandoned shipments were deemed (that is, they became) the property of the government. Therefore, when petitioner withdrew the oil shipments for consumption, it appropriated for itself properties which already belonged to the government. Accordingly, it became liable for the total dutiable value of the shipments of imported crude oil amounting to ₱1,210,280,789.21 reduced by the total amount of duties paid amounting to ₱316,499,021.00 thereby leaving a balance of ₱893,781,768.21.

By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject. Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court,

unless there is a clear showing of a reversible error or an improvident exercise of authority. There is no such showing here.[7]

The contrary ruling of the majority, as expressed in the ponencia, is a clear abandonment of the established principle in *Chevron*; thus, the need to refer this case to the Court *en banc*.

Accordingly, I vote to **GRANT** the instant Omnibus Motion.

THIRD DIVISION

[G.R. No. 198544. June 19, 2017]

SEAPOWER SHIPPING ENT., INC., *petitioner, vs.* **HEIRS OF WARREN M. SABANAL, represented by ELVIRA ONG-SABANAL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; SEAFARER; 1989 POEA "REVISED STANDARD EMPLOYMENT CONTRACT GOVERNING THE EMPLOYMENT OF ALL FILIPINO SEAMEN ON-BOARD OCEAN-GOING VESSELS" (POEA-SEC); THE EMPLOYER IS GENERALLY LIABLE FOR DEATH COMPENSATION BENEFITS WHEN A SEAFARER DIES DURING THE TERM OF EMPLOYMENT UNLESS THE EMPLOYER SUCCESSFULLY PROVES THAT THE SEAFARER'S DEATH WAS CAUSED BY AN INJURY DIRECTLY ATTRIBUTABLE TO HIS DELIBERATE OR WILLFUL ACT.— The relationship between Seapower and Sabanal is governed by the 1989 POEA "Revised Standard Employment Contract Governing the Employment of All Filipino

---

[7] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs, supra* note 5, at 736-737. (Emphasis ours).

Seamen On-Board Ocean-Going Vessels" (POEA-SEC) which was in force on July 20, 1995, the date Seapower hired Sabanal. Under the POEA-SEC, the employer is generally liable for death compensation benefits when a seafarer dies during the term of employment. This rule, however, is not absolute. Part II, Section C(6) of the POEA-SEC exempts the employer from liability if it can successfully prove that the seafarer's death was caused by an injury directly attributable to his deliberate or willful act. The provision reads: No compensation shall be payable in respect of any injury, incapacity, disability or death resulting from a willful act on his own life by the seaman, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to him.

2. **ID.; ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THAT THE SEAFARER'S DEATH WAS DIRECTLY ATTRIBUTABLE TO HIS DELIBERATE OR WILLFUL ACT, BUT EVIDENCE OF INSANITY OR MENTAL SICKNESS MAY BE PRESENTED TO NEGATE THE REQUIREMENT OF WILLFULNESS AS A MATTER OF COUNTER-DEFENSE, BUT THE BURDEN OF EVIDENCE IS THEN SHIFTED TO THE CLAIMANT TO PROVE THAT THE SEAFARER WAS OF UNSOUND MIND.—** Since it is undisputed that Sabanal's death happened during the term of the employment contract, the burden rests on the employer to prove by substantial evidence that Sabanal's death was directly attributable to his deliberate or willful act. For its part, Seapower submitted the ship log entries and master's report to prove that Sabanal suddenly jumped overboard the MT Montana. The Labor Arbiter, NLRC, and Court of Appeals all agree that the evidence presented sufficiently establish that Sabanal indeed jumped into the sea. The Court of Appeals, however, ruled that Sabanal's act was not a willful one because he was not in his right mental state when he committed the act. Evidence of insanity or mental sickness may be presented to negate the requirement of willfulness as a matter of counter-defense. But the burden of evidence is then shifted to the claimant to prove that the seafarer was of unsound mind.

3. **ID.; ID.; ID.; ID.; IN ORDER FOR INSANITY TO PROSPER AS A COUNTER-DEFENSE, THE CLAIMANT MUST SUBSTANTIALLY PROVE THAT THE SEAFARER SUFFERED FROM COMPLETE DEPRIVATION OF**

INTELLIGENCE IN COMMITTING THE ACT OR COMPLETE ABSENCE OF THE POWER TO DISCERN THE CONSEQUENCES OF HIS ACTION, AS MERE ABNORMALITY OF THE MENTAL FACULTIES DOES NOT FORECLOSE WILLFULNES.— Elvira did not present any evidence to support her claim that Sabanal was already insane when he jumped overboard. Similar to the claimant in *Agile,* she only relied on the strange behavior of Sabanal as detailed by the ship captain in the ship log and master's report. However, as we already held, while such behavior may be indicative of a possible mental disorder, it is insufficient to prove that Sabanal had lost **full** control of his faculties. In order for insanity to prosper as a counter-defense, the claimant must substantially prove that the seafarer suffered from complete deprivation of intelligence in committing the act or complete absence of the power to discern the consequences of his action. Mere abnormality of the mental faculties does not foreclose willfulness. In fact, the ship log shows Sabanal was still able to correct maps and type the declarations of the crew hours before he jumped overboard. The captain observed that Sabanal did not appear to have any problems while performing these simple tasks, while the sailor-on-guard reported that Sabanal did not show any signs of unrest immediately before the incident. These circumstances, coupled with the legal presumption of sanity, tend to belie Elvira's claim that Sabanal no longer exercised any control over his own senses and mental faculties.

4. ID.; ID.; ID.; JUSTICE IS IN EVERY CASE FOR THE DESERVING, TO BE DISPENSED WITH IN THE LIGHT OF ESTABLISHED FACTS, THE APPLICABLE LAW, AND EXISTING JURISPRUDENCE.— While it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seafarers in the pursuit of their employment on board ocean-going vessels, still, the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Puracan Law Office and Associate for respondents.

D E C I S I O N

JARDELEZA, *J.*:

The Philippine Overseas Employment Agency (POEA) standard employment contract for Filipino seafarers exempts the employer from liability for death or injury resulting from the seafarer's willful act. The question here is whether the exemption extends to the case when the seafarer had been acting strangely prior to jumping into the sea.

I

Petitioner Sea Power Shipping Enterprises, Inc. (Seapower), for and on behalf of its principal Westward Maritime Corporation, hired Warren M. Sabanal (Sabanal) as Third Mate onboard MT Montana on July 20, 1995.[1] After undergoing the routine pre-employment medical examination and being declared fit to work,[2] Sabanal boarded the ship and commenced his duties.

Sometime in September 1995, during voyage, Sabanal started exhibiting unusual behavior. When the ship captain checked on him on September 22, 1995, he responded incoherently, though it appeared that he had problems with his brother in the Philippines. This prompted the captain to set double guards on Sabanal. The sailors watching over Sabanal reported that he wanted to board a life boat, citing danger in the ship's prow. Because of Sabanal's condition, the captain relieved him of his shift and allowed him to sleep in the cabin guarded.[3] The following day, the captain wanted to supervise Sabanal better, so he took him on deck and assigned to him simple tasks, such as correcting maps and collecting and typing the crew's declarations. The captain observed that Sabanal's condition was "rather better" and he "did not appear to have any problems."[4]

---

[1] *Rollo*, p. 138.

[2] *Id.* at 140.

[3] *Id.* at 172-173.

[4] *Id.* at 173-174.

Later that day, Sabanal requested the sailor-on-guard that he be allowed to return to the deck for some fresh air. Once on deck, Sabanal suddenly ran to the stern and jumped to the sea. The ship's rescue attempts proved futile, and Sabanal's body was never recovered.[5]

During the first week of October 1995, Seapower informed Sabanal's wife, Elvira, regarding the incident. According to Elvira, Seapower was non-committal regarding Sabanal's contractual benefits that would accrue to her and their two children. She alleged that Seapower told her that she has to wait for a period of seven to ten years before Sabanal can be declared dead.[6] Relying on Seapower's representation, Elvira went back to Seapower sometime in late 2004 or early 2005 to claim whatever benefits she was entitled to. Seapower informed her that she was only entitled to the death benefits under the Social Security System; Seapower, allegedly for the first time, categorically disclaimed any liability for Sabanal's death.[7] Thus, it was only on May 16, 2005 that Elvira was able to file a complaint for payment of Sabanal's death benefits.[8]

Seapower, however, denied that it deceived Elvira into believing that she had to wait for seven years before she could claim death benefits. It claimed that it was forthright with Elvira and told her early on that her husband committed suicide. Seapower raised as defenses the prescription of Elvira's action, the assumption of Bright Maritime Corporation of full responsibility over seafarers onboard MT Montana, and the non-compensability of death resulting from suicide.[9]

The Labor Arbiter dismissed Elvira's case on the grounds of prescription and lack of merit. It ruled that Elvira failed to substantiate her claim that Seapower misled her to wait for

---

[5] *Id*. at 174-175.

[6] *Id*. at 115.

[7] *Id*. at 116.

[8] *Id*. at 104-105.

[9] *Id*. at 165-166.

seven to ten years; thus, her claim was already barred by the statute of limitations. In any case, the Labor Arbiter ruled that the pieces of evidence submitted by Seapower, particularly, copies of the ship's log and the master's report, clearly show that Sabanal took his own life. Hence, his death is not compensable.[10]

On appeal, the National Labor Relations Commission (NLRC) First Division affirmed the Labor Arbiter's dismissal of the complaint. Although it found that the action had not prescribed because the prescriptive period only began to run upon Seapower's categorical denial of Elvira's claim in early 2005, the NLRC found that Sabanal's suicide was established by substantial evidence. It held that when the death of the seaman resulted from his own willful act, the death is not compensable:[11]

> WHEREFORE, the appeal is hereby DISMISSED. The Decision of Labor Arbiter Teresita D. Castillon-Lora dated October 28, 2005 is AFFIRMED.
>
> SO ORDERED.[12]

After the NLRC denied Elvira's motion for reconsideration,[13] Elvira elevated the case to the Court of Appeals on *certiorari* primarily raising the admissibility of the copies of the ship log and master's report, which were only presented by Seapower in its rejoinder before the Labor Arbiter, as well as the finding that Sabanal willfully took his own life. With respect to the first issue, the Court of Appeals did not find grave abuse of discretion on the part of the NLRC because the tribunal is not strictly bound by technical rules of procedure and must use all reasonable means to ascertain the facts of the case.[14] The Court of Appeals, however, reversed the NLRC on the second issue.

---

[10] *Id.* at 205-214.

[11] *Id.* at 284-286.

[12] *Id.* at 286.

[13] *Id.* at 322-323.

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

Relying on Sabanal's strange conduct prior to jumping off ship, it concluded that "his actions were borne not by his willful disregard of his safety and of his life, but, on the contrary, he became paranoid that the ship was in grave danger, that he wanted to save himself from the imagined doom that was to befall the ship."[15] Accordingly, the Court of Appeals ordered Seapower to pay death benefits to Elvira.[16] It subsequently denied Seapower's motion for reconsideration.[17]

Seapower is now before us raising the sole issue of whether Sabanal's death is compensable.[18]

II

The relationship between Seapower and Sabanal is governed by the 1989 POEA "Revised Standard Employment Contract Governing the Employment of All Filipino Seamen On-Board Ocean-Going Vessels"[19] (POEA-SEC) which was in force on July 20, 1995, the date Seapower hired Sabanal. Under the POEA-SEC, the employer is generally liable for death compensation benefits when a seafarer dies during the term of employment. This rule, however, is not absolute. Part II, Section C(6) of the POEA-SEC exempts the employer from liability if it can successfully prove that the seafarer's death was caused by an injury directly attributable to his deliberate or willful act.[20] The provision reads:

---

[15] *Id.* at 20.

[16] Decision dated May 9, 2011, penned by Associate Justice Ramon A. Cruz, with Associate Justices Jose C. Reyes, Jr. and Antonio L. Villamor concurring. *Id.* at 15-22.

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

[18] *Id.* at 38-66.

[19] As revised by POEA Memorandum Circular No. 41, series of 1989; later superseded by POEA Memorandum Circular No. 9, series of 2000; and currently, by POEA Memorandum Circular No. 10, series of 2010, "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships."

[20] *Crewlink, Inc. v. Teringtering*, G.R. No. 166803, October 11, 2012, 684 SCRA 12, 21.

No compensation shall be payable in respect of any injury, incapacity, disability or death resulting from a willful act on his own life by the seaman, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to him.[21]

Since it is undisputed that Sabanal's death happened during the term of the employment contract, the burden rests on the employer to prove by substantial evidence that Sabanal's death was directly attributable to his deliberate or willful act. For its part, Seapower submitted the ship log entries and master's report to prove that Sabanal suddenly jumped overboard the MT Montana. The Labor Arbiter, NLRC, and Court of Appeals all agree that the evidence presented sufficiently establish that Sabanal indeed jumped into the sea. The Court of Appeals, however, ruled that Sabanal's act was not a willful one because he was not in his right mental state when he committed the act. Evidence of insanity or mental sickness may be presented to negate the requirement of willfulness as a matter of counter-defense.[22] But the burden of evidence is then shifted to the claimant to prove that the seafarer was of unsound mind.[23] The question, therefore, is whether Elvira was able to prove by substantial evidence that Sabanal has lost full control of his faculties when he jumped overboard. Or, more precisely, whether his unusual behavior prior to the incident is such substantial evidence.

In *Agile Maritime Resources, Inc. v. Siador (Agile)*, which also involved a seafarer jumping overboard, we held that "[s]ince

---

[21] The 2010 POEA-SEC has a similar provision under Section 20(D). It provides:

> 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.

[22] *Agile Maritime Resources, Inc. v. Siador*, G.R. No. 191034, October 1, 2014, 737 SCRA 360, 377.

[23] *Id.* at 371-372.

the willfulness may be inferred from the physical act itself of the seafarer (his jump into the open sea), the insanity or mental illness required to be proven must be one that deprived him of the full control of his senses; in other words, there must be sufficient proof to negate voluntariness."[24] The Court of Appeals in *Agile* similarly relied on the unusual demeanor and actuations by the seafarer a few days before the incident to conclude that the seafarer was no longer in his right mind, and therefore, his act of jumping into the open sea cannot be considered willful.[25] On petition for review, we reversed the Court of Appeals. We held that the seafarer's strange behavior alone is insufficient to prove his insanity. Without proof that his mental condition negated the voluntariness he showed in stepping overboard, the Court of Appeals' finding of insanity was merely speculative.[26]

We reached a similar conclusion in *Crewlink, Inc. v. Teringtering (Crewlink)*.[27] The case involved another seafarer jumping into the sea, with the widow raising the counter-defense that her husband suffered from a psychotic disorder, or Mood Disorder Bipolar Type, to disprove the willfulness of her husband's act. We found the argument unmeritorious because, other than her bare allegation that her husband was suffering from a mental disorder, the claimant presented no evidence, witness, or any medical report to support the claim of insanity. We explained that:

> Homesickness and/or family problems may result to depression, but the same does not necessarily equate to mental disorder. The issue of insanity is a question of fact; for insanity is a condition of the mind not susceptible of the usual means of proof. As no man would know what goes on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Establishing the insanity of [a deceased seafarer] requires opinion testimony which may be given by a witness who is intimately

---

[24] *Id.* at 377.

[25] *Id.* at 374-375.

[26] *Id.* at 378-379.

[27] *Supra* note 20.

acquainted with the person claimed to be insane, or who has rational basis to conclude that a person was insane based on the witness' own perception of the person, or who is qualified as an expert, such as a psychiatrist. No such evidence was presented to support respondent's claim.[28] (Citation omitted.)

Agile and *Crewlink* are squarely applicable to the present case. Elvira did not present any evidence to support her claim that Sabanal was already insane when he jumped overboard. Similar to the claimant in *Agile*, she only relied on the strange behavior of Sabanal as detailed by the ship captain in the ship log and master's report. However, as we already held, while such behavior may be indicative of a possible mental disorder, it is insufficient to prove that Sabanal had lost **full** control of his faculties. In order for insanity to prosper as a counter-defense, the claimant must substantially prove that the seafarer suffered from complete deprivation of intelligence in committing the act or complete absence of the power to discern the consequences of his action. Mere abnormality of the mental faculties does not foreclose willfulness.[29] In fact, the ship log shows Sabanal was still able to correct maps and type the declarations of the crew hours before he jumped overboard. The captain observed that Sabanal did not appear to have any problems while performing these simple tasks, while the sailor-on-guard reported that Sabanal did not show any signs of unrest immediately before the incident.[30] These circumstances, coupled with the legal presumption of sanity,[31] tend to belie Elvira's claim that Sabanal no longer exercised any control over his own senses and mental faculties.

The case of *Interorient Maritime Enterprises, Inc. v. NLRC*,[32] cited by the Court of Appeals, finds no application here. That

---

[28] *Id.* at 21.

[29] See *People v. Madarang*, G.R. No. 132319, May 12, 2000, 332 SCRA 99, 113.

[30] *Rollo*, pp. 173-174.

[31] CIVIL CODE, Art. 800.

[32] G.R. No. 115497, September 16, 1996, 261 SCRA 757.

case involved a seafarer who was shot dead after he attempted to attack a policeman while at a stopover in Bangkok, Thailand. When the incident occurred, he was already headed to Manila, having been previously repatriated. To avoid liability, the employer claimed that the seafarer's act of running amuck in Bangkok was the cause of his demise. In rejecting the employer's defense, we cited its failure to observe appropriate precautionary measures in handling the seafarer's return trip because it allowed the seafarer, who had already been exhibiting strange behavior, to travel home alone.[33] The primary basis of the employer's liability was, thus, its negligence and nonchalant attitude towards the seafarer. These circumstances, however, do not obtain here. The records show that as soon as the ship captain became aware of Sabanal's unusual behavior, he immediately assigned other sailors to specifically watch over Sabanal. At the time he jumped overboard, Sabanal was actually accompanied by a designated sailor. Unfortunately, the sailor was unable to stop Sabanal from jumping overboard because of the latter's brisk movement. The crew then immediately undertook rescue maneuvers, throwing life buoys into the sea, turning the ship, and lowering the life boats.[34] But despite their diligent efforts, they were unable to save Sabanal or recover his body.

While it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seafarers in the pursuit of their employment on board ocean-going vessels, still, the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[35]

WHEREFORE, the petition is **GRANTED**. The Decision dated May 9, 2011 and Resolution dated September 12, 2011 of the Court of Appeals in CA-G.R. SP No. 103137 are **REVERSED**

---

[33] *Id*. at 770, 772.

[34] *Rollo*, pp. 174-175.

[35] *Unicol Management Services, Inc. v. Malipot*, G.R. No. 206562, January 21, 2015, 747 SCRA 191, 208-209.

and **SET ASIDE**. The Decision dated October 31, 2007 and Resolution dated January 30, 2008 of the National Labor Relations Commission are **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 202922. June 19, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SEMIRARA MINING CORPORATION,** *respondent*.

SYLLABUS

1. TAXATION; COAL DEVELOPMENT ACT OF 1976 (PD NO. 972); TAX EXEMPTIONS AS ONE OF THE INCENTIVES GIVEN TO OPERATORS, STILL EFFECTIVE.— SMC'S claim for VAT exemption is anchored x x x on the tax incentives granted to operators of Coal Operating Contract (COCs) executed pursuant to PD No. 972. The COC implements the declared state policy in PD No. 972 to "accelerate the exploration, development, exploitation, production and utilization of the country's coal resources" through the "participation of the private sector with sufficient capital, technical and managerial resources," who shall undertake to perform all coal operations and provide all necessary services, technology and financing in connection therewith. In furtherance of this policy, Section 16 of PD No. 972 provides various incentives to COC operators, including tax exemptions, to wit: x x x **Exemption from all taxes (national and local) except income tax;** The Court agrees with the CTA that the tax exemption provided under Section 16 of PD No. 972 was **not** revoked, withdrawn or repealed —

expressly or impliedly — by Congress with the enactment of RA No. 9337.

2. POLITICAL LAW; STATUTORY CONSTRUCTION; A SPECIAL LAW CANNOT BE REPEALED OR MODIFIED BY A SUBSEQUENTLY ENACTED GENERAL LAW IN THE ABSENCE OF ANY EXPRESS PROVISION IN THE LATTER LAW TO THAT EFFECT.— It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law. x x x [C]omparing the two laws, it is apparent that neither kind of implied repeal exists in this case. RA No. 9337 does not cover the whole subject matter of PD No. 972 and could not have been intended to substitute the same. There is also no irreconcilable inconsistency or repugnancy between the two laws.

3. TAXATION; APPLICATION FOR TAX REFUND; FAILURE TO SUBMIT SUPPORTING DOCUMENTS PRESCRIBED UNDER REVENUE MEMORANDUM ORDER (RMO) NO. 53-98 IS NOT FATAL.— The CIR insists that SMC's claim for VAT refund should be denied for failure to submit, at the administrative level, the required supporting documents prescribed under RMO No. 53-98. x x x In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, the Court, sitting *En Banc*, ruled: x x x **Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.** x x x **[T]he question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.** The CTA found that SMC submitted various documents in support of its claim for VAT refund. x x x Settled is the rule that the Court will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Romulo Mabanta Buenventura Sayoc & Delos Angeles 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 Commissioner of Internal Revenue (CIR), assailing the Decision dated April 23, 2012[2] and Resolution dated July 26, 2012[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 793, which granted the claim of respondent Semirara Mining Corporation (SMC) for refund or issuance of tax credit of final value-added tax (VAT) it erroneously paid in connection with its sales of coal for the period covering July 1, 2006 to December 31, 2006.

Facts

SMC is a duly registered and existing domestic corporation, registered with the Bureau of Internal Revenue (BIR) as a non-VAT enterprise engaged in coal mining business.[4] It conducts business by virtue of Presidential Decree (PD)

---

[1] *Rollo*, pp. 8-25.

[2] *Id.* at 29-34. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla concurring; Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, and Olga Palanca-Enriquez were on wellness leave.

[3] *Id.* at 36-38. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla concurring; Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, took no part.

[4] *Id.* at 30.

No. 972,[5] otherwise known as the "Coal Development Act of 1976."[6]

On June 8, 1983, Semirara Coal Corporation (SCC) executed a Coal Operating Contract[7] (COC) with the Ministry of Energy (now Department of Energy) through the Bureau of Energy Development. The term of the COC is until the year 2012.[8] In 2002, SCC changed its corporate name to SMC, the herein petitioner.[9]

As a coal mine operator, SMC sells its coal production, under the COC, to various customers, among which is the National Power Corporation (NPC), a government-owned and controlled corporation, in accordance with the duly executed Coal Supply Agreement dated May 19, 1995.[10]

SMC has been selling coal to NPC for years without paying VAT pursuant to the exemption granted under Section 16 of PD No. 972.[11] However, after Republic Act (RA) No. 9337,[12] which amended certain provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, took effect on July 1, 2005,[13] NPC started to withhold a tax of five percent (5%) representing the final withholding VAT on SMC's coal billings

---

[5] PROMULGATING AN ACT TO PROMOTE AN ACCELERATED EXPLORATION, DEVELOPMENT, EXPLOITATION, PRODUCTION AND UTILIZATION OF COAL, July 28, 1976.

[6] *Rollo*, p. 101.

[7] Exhibit "E", Petitioner's Formal Offer of Evidence.

[8] Exhibit "D", *id*.

[9] *Rollo*, p. 102.

[10] *Id*.

[11] *Id*. at 103.

[12] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, May 24, 2005.

[13] Stated as November 1, 2005 in the CTA Division's Decision; *rollo*, p. 104.

pursuant to Section 114(C)[14] of the same law, on the belief that the sale of coal by SMC was no longer exempt from VAT.[15]

In view thereof, SMC requested for a BIR pronouncement sustaining its position that its sale of coal to NPC was still exempt from VAT notwithstanding RA No. 9337, which the BIR granted through BIR Ruling No. 006-2007.[16]

Consequently, on May 21, 2007, January 21, 2008, and January 29, 2008, SMC filed with the BIR Large Taxpayers Division, Revenue District Office No. 121-Quezon City, letters with supporting documents requesting for a refund or issuance of a tax credit certificate (TCC) in the total amount of ₱77,253,245.39, representing the final withholding VAT withheld by NPC on its coal billing for the period of July 1, 2006 to December 31, 2006.[17]

Due to the CIR's inaction, SMC filed on August 8 and November 10, 2008 its petitions for review with the CTA Division, docketed as CTA Case No. 7822 and 7849.[18] In a

---

[14] SEC. 114. *Return and Payment of Value-added Tax*. –

x x x x x x x x x

(C) *Withholding of Value-added Tax*. – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

[15] *Rollo*, p. 104.

[16] *Id*. at 30.

[17] *Id*. at 105.

[18] *Id*. at 57-87.

Resolution dated January 27, 2009, the CTA Division consolidated CTA Case Nos. 7822 and 7849.[19]

Ruling of the CTA Division

On March 28, 2011, the CTA Division rendered its Decision[20] granting SMC's refund claim for erroneously paid final VAT withheld by NPC.[21] The CTA Division found that SMC is exempt from VAT pursuant to Section 109(K) of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 9337, in relation to Section 16 of PD No. 972.[22] The CTA Division also found that SMC timely filed its administrative and judicial claims[23] and submitted relevant documents in support thereof.[24] Thus, the dispositive portion of the CTA Division's Decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petitions for Review are hereby **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱77,253,245.39, representing the erroneously paid final VAT withheld by the National Power Corporation and remitted to the Bureau of Internal Revenue in connection with its sales of coal for the period covering July 1, 2006 to December 31, 2006.
>
> **SO ORDERED.**[25]

The CIR moved for reconsideration but this was denied by the CTA Division in a Resolution[26] dated June 3, 2011.

---

[19] *Id*. at 107.

[20] *Id*. at 100-127. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring.

[21] *Id*. at 126.

[22] *Id*. at 125.

[23] *Id*. at 113.

[24] *Id*. at 122.

[25] *Id*. at 126.

[26] *Id*. at 129-132. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta concurring; Associate Justice Erlinda P. Uy was on leave.

Undaunted, the CIR filed a Petition for Review[27] with the CTA *En Banc*, docketed as CTA EB No. 793.

Ruling of the CTA *En Banc*

In the assailed Decision,[28] the CTA *En Banc* dismissed the CIR's petition for lack of merit.[29] The CTA *En Banc* noted that the CIR's arguments were a mere rehash of its previous arguments already raised before, discussed and resolved by the CTA Division; thus, it found no reason to disturb the CTA Division's finding that SMC is entitled to the claimed VAT refund.[30]

On July 26, 2012, the CTA *En Banc* issued the assailed Resolution[31] denying the CIR's motion for reconsideration[32] for lack of merit.

Hence, the instant petition raising the following issues:

[WHETHER THE CTA] ERRED IN HOLDING THAT [SMC] IS ENTITLED TO A TAX CREDIT/REFUND DESPITE THE LATTER'S FAILURE TO SUBMIT REQUISITE DOCUMENTS TO THE BIR.

[WHETHER THE CTA] ERRED IN HOLDING THAT THE TRANSACTION OF SALE OR IMPORTATION OF COAL IS EXEMPT FROM VAT.[33]

The CIR argues that the provision which grants tax exemption to SMC under Section 109(e) of the NIRC of 1997, as amended, was withdrawn by the legislature when RA No. 9337 was passed deleting the "sale or importation of coal and natural gas, in

---

[27] *Id*. at 133-142.

[28] *Supra* note 2.

[29] *Id*. at 33.

[30] *Id*. at 31.

[31] *Supra* note 3.

[32] *Id*. at 39-45.

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

whatever form or state"[34] from the list of transactions exempt from VAT.[35]

The CIR further claims that the CTA erroneously approved SMC's claim Tor tax refund/credit because the latter failed to submit complete documents in support of its administrative claim for refund. According to the CIR, SMC's administrative claim for tax refund is *pro forma* because SMC failed to submit the list of documents (required to support an application for a tax refund) enumerated under Revenue Memorandum Order (RMO) No. 53-98; consequently, the instant judicial appeal is without foundation and should suffer the same fate.[36]

For its part, SMC insists that its sales of coal to NPC is exempt from VAT under RA No. 9337 in relation to PD No. 972. According to SMC, RA No. 9337 did not withdraw the tax exemption granted by PD No. 972 and incorporated into SMC's coal operating contract, considering that Section 109(K) of the NIRC of 1997, as amended by RA No. 9337, expressly recognizes that transactions which are exempt under special laws are also exempt from VAT. SMC further claims that RA No. 9337 could not have impliedly repealed PD No. 972 because no irreconcilable inconsistency and repugnancy exists between the two laws and that the general repealing clause in RA No. 9337 does not prevail over specific provisions of PD No. 972. Finally, SMC asserts that both its administrative and judicial claims for refund were supported by documentary evidence; that the CTA, after evaluating all evidence it had submitted, concluded that SMC had sufficiently substantiated its claim for VAT refund.[37]

The Court's Ruling

The Petition lacks merit.

---

[34] *Id*. at 21.

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

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

[37] Comment dated December 28, 2012, *id*. at 163-176.

Tax exemptions under PD No. 972.

Contrary to the CIR's contention, SMC's claim for VAT exemption is anchored not on the paragraph deleted by RA No. 9337 from the list of VAT exempt transactions under Section 109 of the NIRC of 1997, as amended, but on the tax incentives granted to operators of COCs executed pursuant to PD No. 972.

The COC implements the declared state policy in PD No. 972 to "accelerate the exploration, development, exploitation, production and utilization of the country's coal resources"[38] through the "participation of the private sector with sufficient capital, technical and managerial resources,"[39] who shall undertake to perform all coal operations and provide all necessary services, technology and financing in connection therewith.[40] In furtherance of this policy, Section 16 of PD No. 972 provides various incentives to COC operators, including tax exemptions, to wit:

> SEC. 16. *Incentives to Operators*. — The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> a) **Exemption from all taxes except income tax;**
>
> b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to the following conditions.[41]

As VAT is one of the national internal revenue taxes, it falls within the tax exemptions provided under PD No. 972.

Section 16 of PD No. 972 was, in turn, incorporated in the terms and conditions of SMC's COC, to wit:

---

[38] PD No. 972, Sec. 2.

[39] *Id.*, Fourth WHEREAS Clause.

[40] Exhibit "E", Petitioner's Formal Offer of Evidence, p. 9; see also PD No. 972, Sec. 9.

[41] Emphasis supplied.

SECTION V — RIGHTS AND OBLIGATIONS OF THE PARTIES

x x x x x x x x x

5.2 The OPERATOR shall have the following rights:

a) Exemption from all taxes (national and local) except income tax;[42]

The Court agrees with the CTA that the tax exemption provided under Section 16 of PD No. 972 was **not** revoked, withdrawn or repealed expressly or impliedly — by Congress with the enactment of RA No. 9337.

It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect.[43] A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion.[44] The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law. Section 24 of RA No. 9337 pertinently reads:

SEC. 24. *Repealing Clause*. — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

(A) Section 13 of R.A. No. 6395 on the exemption from value--added tax of the National Power Corporation (NPC);

(B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and

(C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to

---

[42] Exhibit "E", Petitioner's Formal Offer of Evidence, pp. 9, 11; emphasis supplied.

[43] *Commissioner of Internal Revenue v. Secretary of Justice*, G.R. No. I77387, November 9, 2016, p. 9.

[44] *Id*.

and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

Had Congress intended to withdraw or revoke the tax exemptions under PD No. 972, it would have explicitly mentioned Section 16 of PD No. 972, in the same way that it specifically mentioned Section 13 of RA No. 6395 and Section 6, paragraph 5 of RA No. 9136, as among the laws repealed by RA No. 9337.

The CTA also correctly ruled that RA No. 9337 could not have impliedly repealed PD No. 972. In *Mecano v. Commission on Audit*,[45] the Court extensively discussed how repeals by implication operate, to wit:

There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other.[46]

Comparing the two laws, it is apparent that neither kind of implied repeal exists in this case. RA No. 9337 does not cover the whole subject matter of PD No. 972 and could not have been intended to substitute the same. There is also no irreconcilable inconsistency or repugnancy between the two laws. While under RA No. 9337, the "sale or importation of coal and natural gas, in whatever form or state" was deleted from the list of VAT exempt transactions, Section 7 of the same law reads:

SEC. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

---

[45] 290-A Phil. 272 (1992).

[46] *Id*. at 280-281. Citations omitted.

"SEC. 109. *Exempt Transactions*. — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

x x x x x x x x x

"(K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529;[47]

Verily, as things stand, SMC is exempt from the payment of VAT on the sale of coal produced under its COC, because Section 16(a) of PD No. 972, a special law, grants SMC exemption from all national taxes except income tax. Accordingly, SMC is entitled to claim for a refund of the 5% final VAT erroneously withheld on SMC's coal billings and remitted by NPC to the BIR.

Notably, the BIR validated SMC's VAT exemption under PD No. 972 through BIR Ruling No. 006-2007,[48] which provides:

Be that as it may, since the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provides to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC. In short, the imposition of VAT on the transaction which burden may be passed on the seller of the product/services to its buyer is not the same with exempting the transaction itself from VAT, as contemplated under PD 972.

In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109(k) of the Tax Code, as amended by R.A. 9337, in relation to PD 972, as amended.[49]

---

[47] Emphasis supplied.

[48] Exhibit "I", Petitioner's Formal Offer of Evidence.

[49] *Id*. at 11.

Submission of supporting documents prescribed under RMO No. 53-98.

The CIR insists that SMC's claim for VAT refund should be denied for failure to submit, at the administrative level, the required supporting documents prescribed under RMO No. 53-98.

The issue of whether non-submission of the documents enumerated under RMO No. 53-98 at the administrative level is fatal to the taxpayer's judicial claim for VAT refund is not novel. In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[50] the Court, sitting *En Banc*, ruled:

> Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
>
> This should also be corrected.
>
> To quote RMO No. 53-98:
>
> REVENUE MEMORANDUM ORDER NO. 53-98
>
> SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.
>
> TO: All Internal Revenue Officers, Employees and Others Concerned
>
> I. *BACKGROUND*
>
> It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.
>
> For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax,

---

[50] G.R. No. 207112, December 8, 2015, 776 SCRA 395.

as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. *OBJECTIVE*

This order is issued to:

a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

III. *LIST OF REQUIREMENTS PER TAX TYPE*

Income Tax/Withholding Tax
— Annex A (3 pages)

Value-Added Tax
— Annex B (2 pages)
— Annex B-1 (5 pages)

x x x x x x x x x

As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
>
> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have

> informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
>
> x x x x x x x x x

As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[51]

The CTA found that SMC submitted various documents in support of its claim for VAT refund and a scrutiny thereof proved that NPC indeed erroneously withheld and remitted to the BIR a final withholding VAT, in the amount of ₱77,253,245.39, on its gross payments for coal purchases from SMC for the third and fourth quarters of 2006.[52] Settled is the rule that the Court

---

[51] *Id*. at 421-424; Emphasis and underscoring in the original omitted; emphasis supplied.

[52] *Rollo*, p. 124.

will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[53] In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[54] this Court ruled that:

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. x x x this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[55]

There is no reason for this Court to depart from this well-entrenched principle, since the CTA did not abuse its authority or committed gross error in granting SMC's refund claim.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED**. The Decision dated April 23, 2012 and the Resolution dated July 26, 2012 of the CTA *En Banc* in CTA EB No. 793 are hereby **AFFIRMED**.

SO ORDERED.

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

---

[53] *Bonifacio Water Corp. v. The Commissioner of Internal Revenue*, 714 Phil. 413, 426 (2013).

[54] 529 Phil. 785 (2006).

[55] *Id.* at 794-795; citations omitted.

[*] Designated additional member per Raffle dated June 19, 2017 vice Associate Justice Mariano C. Del Castillo.

THIRD DIVISION

[G.R. No. 206114. June 19, 2017]

DOLORES ALEJO, *petitioner, vs.* **SPOUSES ERNESTO CORTEZ AND PRISCILLA SAN PEDRO, SPOUSES JORGE LEONARDO and JACINTA LEONARDO and THE REGISTER OF DEEDS OF BULACAN,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; PROCEDURE IN THE COURT OF APPEALS; POWER TO DISMISS AN APPEAL IS DISCRETIONARY.— Technically, the CA may dismiss the appeal for failure to comply with the requirements under Sec. 13, Rule 44. Thus, Section 1, Rule 50 provides that an appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee upon the ground, among others, of absence of specific assignment of errors in the appellant's brief, or of page references to the record. Nevertheless, it has been consistently held that such provision confers a power, not a duty, on the appellate court. The dismissal is directory, not mandatory, and as such, not a ministerial duty of the appellate court. In other words, the CA enjoys ample discretion to dismiss or not to dismiss the appeal. What is more, the exercise of such discretion is presumed to have been sound and regular and it is thus incumbent upon Dolores to offset such presumption.

2. CIVIL LAW; FAMILY CODE; CONJUGAL PARTNERSHIP; THE DISPOSITION OF CONJUGAL PROPERTY OF ONE SPOUSE *SANS* THE WRITTEN CONSENT OF THE OTHER IS VOID.— Any alienation or encumbrance of conjugal property made during the effectivity of the Family Code is governed by Article 124 thereof which provides: Article 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. x x x **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 disposition or encumbrance without 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. The law is therefore unequivocal when it states that the disposition of conjugal property of one spouse *sans* the written consent of the other is void.

3. ID.; ID.; ID.; ID.; THE TRANSACTION AS CONTINUING OFFER INTO A BINDING CONTRACT REQUIRES WRITTEN CONSENT TO THE SALE FOR ITS VALIDITY.— It is undisputed that after the execution of the *Kasunduan*, Jorge sent two letters to Dolores: one, informing her that he did not consent to the sale; and the other, demanding that Dolores pay the balance of the purchase price on or before October 5, 1996 and failing which, the purchase price shall be increased to PhP700,000. x x x The second letter, while ostensibly a demand for compliance with Dolores' obligation under the *Kasunduan*, varied its terms on material points, *i.e.,* the date of payment of the balance and the purchase price. Consequently, such counter-offer cannot be construed as evidencing Jorge's consent to or acceptance of the *Kasunduan* for it is settled that where the other spouse's putative consent to the sale of the conjugal property appears in a separate document which does not contain the same terms and conditions as in the first document signed by the other spouse, a valid transaction could not have arisen. x x x Nor can Jorge's alleged participation in the negotiation for the sale of the property or his acquiescence to Dolores' transfer to and possession of the subject property be treated as converting such continuing offer into a binding contract as the law distinctly requires nothing less than a written consent to the sale for its validity. Suffice to say that participation in or awareness of the negotiations is not consent.

4. ID.; PROPERTY; POSSESSION; POSSESSOR IN GOOD FAITH; EFFECTS THEREOF.— While the *Kasunduan* was void from the beginning, Dolores is, in all fairness, entitled to recover from the Spouses Leonardo the amount of PhP300,000 with legal interest until fully paid. [T]he CA correctly appreciated Dolores' standing as a possessor in good faith. x x x Article 526 of the Civil Code provides that she is deemed a possessor

in good faith, who is not aware that there exists in her title or mode of acquisition any flaw that invalidates it. Likewise, as correctly held by the CA, Dolores, as possessor in good faith, is under no obligation to pay for her stay on the property prior to its legal interruption by a final judgment. She is further entitled under Article 448 to indemnity for the improvements introduced on the property with a right of retention until reimbursement is made. The Spouses Leonardo have the option under Article 546 of the Civil Code of indemnifying Dolores for the cost of the improvements or paying the increase in value which the property may have acquired by reason of such improvements.

APPEARANCES OF COUNSEL

Ching Mendoza Quilas and Associates for petitioner.
Dorina S. Castro-Baltazar for respondents.

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 October 3, 2012 and Resolution[3] dated February 26, 2013 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 95432, which reversed the Decision[5] of the Regional Trial Court (RTC),[6] Branch 19 in the City of Malolos, Bulacan. In its assailed Decision and Resolution, the CA declared void the parties'

---

[1] *Rollo*, pp. 8-27, With Annexes.

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

[3] *Id*. at 42.

[4] Penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.

[5] Dated January 14, 2010, entitled "*Dolores Alejo, Plaintiff, versus Sps. Ernesto Cortez, et al.*," and docketed as Civil Case No. 432-M-2003, penned by Judge Renato C. Francisco.

[6] Third Judicial Region, City of Malolos, Bulacan, Branch 19.

agreement for the sale of a conjugal property for lack of written consent of the husband.

The Facts and Antecedent Proceedings

At the heart of the instant controversy is a parcel of land measuring 255 square meters located at Cut-cot, Pulilan, Bulacan and covered by Transfer Certificate of Title No. T-118170. The property belonged to the conjugal property/absolute community of property[7] of the respondent Spouses Jorge and Jacinta Leonardo (Spouses Leonardo) and upon which their residential house was built.

It appears that sometime in March 1996, Jorge's father, Ricardo, approached his sister, herein petitioner Dolores Alejo (Dolores), to negotiate the sale of the subject property.[8] Accordingly, on March 29, 1996, Jacinta executed a *Kasunduan* with Dolores for the sale of the property for a purchase price of PhP500,000. Under the *Kasunduan*, Dolores was to pay PhP70,000 as down payment, while PhP230,000 is to be paid on April 30, 1996 and the remaining balance of PhP200,000 was to be paid before the end of the year 1996.[9] The *Kasunduan* was signed by Jacinta and Ricardo as witness. Jorge, however, did not sign the agreement.

It further appears that the down payment of PhP70,000 and the PhP230,000 were paid by Dolores[10] on the dates agreed upon and thereafter, Dolores was allowed to possess the property and introduce improvements thereon.[11]

However, on July 3, 1996, Jorge wrote a letter to Dolores denying knowledge and consent to the *Kasunduan*. Jorge further informed Dolores that Jacinta was retracting her consent to the

---

[7] Date of marriage of the Spouses Leonardo was not alleged in the pleadings filed.

[8] *Supra* note 5, at 45.

[9] *Supra* note 2, at 31.

[10] *Supra* note 5, at 46.

[11] *Supra* note 5, at 43.

Kasunduan due to Dolores' failure to comply with her obligations.

This was followed by another letter dated September 29, 1996 from Jorge to Dolores demanding that the latter pay the balance of PhP200,000 on or before October 5, 1996, otherwise the purchase price shall be increased to PhP700,000.[12] According to Dolores, she was being compelled by Jorge to sign the agreement but that she refused to do so. As a result, Jorge went to her house, destroyed its water pump and disconnected the electricity. Before the officials of the Barangay, Dolores tendered the balance of PhP200,000 but Jorge refused to accept the same. Instead, Jorge filed cases for ejectment[13] and annulment of sale, reconveyance and recovery of possession[14] against her.[15] These cases were later on dismissed by the trial court on technical grounds.

However, during the pendency of said cases, the subject property was sold by Jorge and Jacinta to respondents Spouses Ernesto Cortez and Priscilla San Pedro (Spouses Cortez) under a Deed of Absolute Sale dated September 4, 1998 for a purchase price of PhP700,000. A new transfer certificate of title was issued in the latter's names. At the time of said sale, Dolores was in possession of the subject property.[16]

Consequently, Dolores filed the case *a quo* for annulment of deed of sale and damages against the Spouses Cortez and the Spouses Leonardo.

The Ruling of the RTC

In its Decision, the RTC noted that while the *Kasunduan* patently lacks the written consent of Jorge, the latter's acts reveal that he later on acquiesced and accepted the same. In

---

[12] *Supra* note 5, at 46.

[13] Docketed as Civil Case No. 645.

[14] Docketed as Civil Case No. 663.

[15] *Id*.

[16] *Supra* note 5, at 48.

particular, the RTC observed that Jorge did not seasonably and expressly repudiate the *Kasunduan* but instead demanded from Dolores compliance therewith and that he allowed Dolores to take possession of the property. Further, the RTC noted that the case for annulment of sale, reconveyance and recovery of possession filed by Jorge. against Dolores had been dismissed and said dismissal attained finality. As such, *res judicata* set in preventing Jorge from further assailing the *Kasunduan*.[17]

Accordingly, the RTC declared the *Kasunduan* as a perfected contract and Dolores as the rightful owner of the property. It further ordered the cancellation of titles issued in the names of the Spouses Leonardo and the Spouses Cortez and the issuance of a new title in the name of Dolores. Finally, the RTC ordered Dolores to pay the balance of PhP200,000 and the Spouses Leonardo to pay moral damages, attorney's fees, litigation expenses and costs of suit.[18]

In disposal, the RTC pronounced:

WHEREFORE, judgment is hereby rendered in favor of plaintiff Dolores Alejo and against defendants [S]pouses Leonardo and Cortez, as follows:

1.) Declaring the "Kasunduan" dated March 29, 1996 a perfected contract, legal, binding and subsisting having been accepted by defendant Jorge Leonardo;
2.) Declaring the plaintiff the true, legal and rightful owner of the subject property;
3.) Declaring TCT No. 18170 in the names of Spouses Jorge Leonardo, Jacinta Leonardo cancelled and of no legal force and effect;
4.) Declaring TCT No. 121491 in the names of Spouses Ernesto Cortez and Priscilla San Pedro null and void and therefore should be ordered cancelled and of no legal force and effect;
5.) In lieu thereof, ordering the Register of Deeds of the Province of Bulacan to issue a new title in the name of plaintiff Dolores Alejo;
6.) Ordering plaintiff Dolores Alejo to pay defendants Spouses Leonardo the sum of Php200,000.00 to complete her obligation under the "Kasunduan";

---

[17] *Supra* note 5, at 56.

[18] *Supra* note 5, at 60-61.

7.) Ordering defendants Spouses Leonardo to pay plaintiff the sum of Php100,000.00 as and by way of moral damages;
8.) Ordering defendants Spouses Leonardo to pay plaintiff the sum of Php50,000.00, as and by way of attorney's fees and litigation expenses;
9.) Ordering defendants Spouses Leonardo to pay the cost of suit.

The claim of Php500,000.00 actual damages as well as Php100,000.00 as exemplary damages are denied for lack of legal as well as factual basis. All other claims and counterclaim are denied for lack of merit.

SO ORDERED.[19]

The Spouses Leonardo and the Spouses Cortez seasonably appealed.

The Ruling of the CA

The CA granted the appeal.[20] Contrary to the findings of the RTC, the CA held that Jorge, by imposing a new period within which Dolores was to pay the remaining balance and by increasing the purchase price, only qualifiedly accepted the *Kasunduan*. Being a qualified acceptance, the same partakes of a counter-offer and is a rejection of the original offer. Consequently, the CA declared the *Kasunduan* as void absent Jorge's consent and acceptance. Nevertheless, the CA found Dolores to be a possessor in good faith who is entitled to reimbursement for the useful improvements introduced on the land or to the increase in the value thereof, at the option of the Spouses Leonardo.

The CA accordingly disposed:

WHEREFORE, the appeal is hereby **GRANTED**. The assailed 14 January 2010 Decision of the Regional Trial Court, Branch 19 of Malolos City, Bulacan is hereby **REVERSED and SET ASIDE**. The *Kasunduan* dated 29 March 1996 is hereby declared **VOID**. TCT No. 121491 in the names of Spouses Cortez and San Pedro is hereby declared **VALID and SUBSISTING**. Appellants Spouses Leonardo are **ORDERED** to reimburse Dolores Alejo the amount of

---

[19] *Id*.

[20] *Supra* note 2.

Php300,000.00 that the latter paid to Jacinta Leonardo, with legal interest until fully paid. Appellants Spouses Leonardo are likewise **ORDERED**, at their option, to indemnify Dolores Alejo with her expenses for introducing useful improvements on the subject land or pay the increase in value which it may have acquired by reason of those improvements, with Alejo entitled to the right of retention of the land until the indemnity is made. Finally, the Regional Trial Court of Malolos City, Bulacan from which this case originated is **DIRECTED** to receive evidence and determine the amount of indemnity to which appellee Dolores Alejo is entitled.

SO ORDERED.[21]

Dolores' motion for reconsideration was denied, hence the instant petition.

The Issues

Dolores argues that the Spouses Leonardo's and Spouses Cortez' appeals ought to have been outrightly dismissed for failure to comply with the requirements of Section 13, Rule 44. On the substantive issue, Dolores maintains that the *Kasunduan* is a perfected and binding contract as it was accepted by Jorge through his overt acts. She also argues that the dismissal of Jorge's complaint for annulment of sale constitutes *res judicata* thus preventing Jorge from further questioning the validity of the *Kasunduan*. Finally, she contends that the Spouses Cortez were not buyers in good faith as they knew that the property was being occupied by other persons.

The Ruling of this Court

The petition is denied.

Dismissal of Appeal Lies within the Sound Discretion of the Appellate Court

Technically, the CA may dismiss the appeal for failure to comply with the requirements under Sec. 13, Rule 44. Thus, Section 1, Rule 50 provides that an appeal may be dismissed by the Court of Appeals, on its own motion or on that of the

---

[21] *Supra*, note 2 at 39-40.

appellee upon the ground, among others, of absence of specific assignment of errors in the appellant's brief, or of page references to the record.

Nevertheless, it has been consistently held that such provision confers a power, not a duty, on the appellate court.[22] The dismissal is directory, not mandatory, and as such, not a ministerial duty of the appellate court.[23] In other words, the CA enjoys ample discretion to dismiss or not to dismiss the appeal. What is more, the exercise of such discretion is presumed to have been sound and regular and it is thus incumbent upon Dolores to offset such presumption. Yet, the records before this Court do not satisfactorily show that the CA has gravely abused its discretion in not dismissing the Spouses Leonardo's and Spouses Cortez' appeals.

On the contrary, We are of the view that the ends of justice will be better served if the instant case is determined on the merits, after full opportunity to ventilate their respective claims and defenses is afforded to all parties. After all, it is far better to decide a case on the merits, as the ultimate end, rather on a technicality.

The key issue in this case is whether the *Kasunduan* for the sale of a conjugal real property between Jacinta and Dolores as a continuing offer has been converted to a perfected and binding contract. For, if Jorge has not accepted or consented to the said sale, the *Kasunduan* is considered void rendering the other issues raised herein merely academic.

Sale by one Spouse of Conjugal Real Property is Void Without the Written Consent of the other Spouse

Any alienation or encumbrance of conjugal property made during the effectivity of the Family Code is governed by Article 124 thereof which provides:

---

[22] *Philippine National Bank v. Philippine Milling Co., Inc.,* 136 Phil. 212 (1969).

[23] *Natonton v. Magaway*, G.R. No. 147011, March 31, 2006, 486 SCRA 199.

Article 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 disposition or encumbrance without 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 law is therefore unequivocal when it states that the disposition of conjugal property of one spouse *sans* the written consent of the other is void. Here, it is an established fact that the *Kasunduan* was entered into solely by Jacinta and signed by her alone. By plain terms of the law therefore, the *Kasunduan* is void.

Nevertheless, We agree with the RTC and the CA when it held that the void *Kasunduan* constitutes a continuing offer from Jacinta and Dolores and that Jorge had the option of either accepting or rejecting the offer before it was withdrawn by either, or both, Jacinta and Dolores.

The point of contention is whether Jorge accepted such continuing offer. If so, then the *Kasunduan* is perfected as a binding contract; otherwise, the *Kasunduan* remains void.

The RTC opined that Jorge's failure to expressly repudiate the *Kasunduan* and his demand that Dolores comply with her undertakings therein show Jorge's acceptance of the sale of the conjugal property. On the other hand, the CA noted that in varying the terms of the *Kasunduan*, *i.e.*, in the time of payment

and the purchase price, Jorge is deemed to have only qualifiedly accepted the same.

We agree with the CA.

It is undisputed that after the execution of the *Kasunduan*, Jorge sent two letters to Dolores: one, informing her that he did not consent to the sale; and the other, demanding that Dolores pay the balance of the purchase price on or before October 5, 1996 and failing which, the purchase price shall be increased to PhP700,000.

Clearly, Jorge's first letter was an outright and express repudiation of the *Kasunduan*. The second letter, while ostensibly a demand for compliance with Dolores' obligation under the *Kasunduan*, varied its terms on material points, *i.e.,* the date of payment of the balance and the purchase price. Consequently, such counter-offer cannot be construed as evidencing Jorge's consent to or acceptance of the *Kasunduan* for it is settled that where the other spouse's putative consent to the sale of the conjugal property appears in a separate document which does not contain the same terms and conditions as in the first document signed by the other spouse, a valid transaction could not have arisen.[24]

Neither can Jorge's subsequent letters to Dolores be treated as a ratification of the *Kasunduan* for the basic reason that a void contract is not susceptible to ratification. Nor can Jorge's alleged participation in the negotiation for the sale of the property or his acquiescence to Dolores' transfer to and possession of the subject property be treated as converting such continuing offer into a binding contract as the law distinctly requires nothing less than a written consent to the sale for its validity. Suffice to say that participation in or awareness of the negotiations is not consent.[25]

---

[24] *Abalos v. Macatagay, Jr.,* G.R. No. 155043, September 30, 2004.

[25] *Jader-Manalo v. Camaisa, et al.*, G.R. No. 147978, January 23, 2002, citing *Tinitigan v. Tinitigan*, 100 SCRA 619 (1980).

As above intimated, a determination that the *Kasunduan* is void renders the other issues raised by Dolores academic, *i.e.*, whether the doctrine of *res judicata* applies and whether the Spouses Cortez are buyers in bad faith; hence they merit no further discussion.

The CA Correctly Ruled that Dolores is a Possessor in Good Faith

While the *Kasunduan* was void from the beginning, Dolores is, in all fairness, entitled to recover from the Spouses Leonardo the amount of PhP300,000 with legal interest until fully paid.

Moreover, the CA correctly appreciated Dolores' standing as a possessor in good faith. It appears that Dolores acted in good faith in entering the subject property and building improvements on it. Ricardo represented that Jacinta and Jorge wanted to sell the subject property. Dolores had no reason to believe that Ricardo and Jacinta were lying. Indeed, upon her own brother's prodding, Dolores willingly parted with her money and paid the down payment on the selling price and later, a portion of the remaining balance. The signatures of Jacinta and of Ricardo (as witness) as well as her successful entry to the property appear to have comforted Dolores that everything was in order. Article 526 of the Civil Code provides that she is deemed a possessor in good faith, who is not aware that there exists in her title or mode of acquisition any flaw that invalidates it.

Likewise, as correctly held by the CA, Dolores, as possessor in good faith, is under no obligation to pay for her stay on the property prior to its legal interruption by a final judgment. She is further entitled under Article 448 to indemnity for the improvements introduced on the property with a right of retention until reimbursement is made. The Spouses Leonardo have the option under Article 546 of the Civil Code of indemnifying Dolores for the cost of the improvements or paying the increase in value which the property may have acquired by reason of such improvements.[26]

---

[26] *Fuentes v. Roca, et al.,* G.R. No. 178902, April 21, 2010.

WHEREFORE, the petition is **DENIED**. The Decision dated October 3, 2012 and Resolution dated February 26, 2013 of the Court of Appeals in CA G.R. CV No. 95432 which (1) declared void the *Kasunduan* dated 29 March 1996; (2) declared valid the title issued in the names of Spouses Cortez and San Pedro; (3) ordered the reimbursement of PhP300,000 with legal interest to Dolores Alejo; (4) ordered the Spouses Leonardo, at their option, to indemnify Dolores Alejo of her expenses on the useful improvements or pay the increase in value on the subject property, with retention rights until indemnity is made; and (5) remanded the case to the RTC for purposes of receiving evidence and determining the amount of said indemnity are **AFFIRMED *in toto***.

SO ORDERED.

*Velasco, Jr. (Chairperson), Bersamin, Reye*s, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 207516. June 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AMBROSIO OHAYAS, ROBERTO OWAS, FLORENCIO RAPANA, CERELO BALURO, EDDIE YAGUNO, RUPO YAGUNO and JERRY YAGUNO,** *accused,* **AMBROSIO OHAYAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; ESTABLISHED.— The elements of the crime of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying

circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide. In this case, these requisites have been established by the prosecution.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ALTHOUGH THERE MAY BE INCONSISTENCIES ON MINOR DETAILS, THE SAME DO NOT IMPAIR THE CREDIBILITY OF THE WITNESSES WHERE THERE IS CONSISTENCY IN RELATING THE PRINCIPAL OCCURRENCE AND POSITIVE IDENTIFICATION OF THE ACCUSED.— [N]otwithstanding accused-appellant's attempt to highlight the inconsistencies, We find that the prosecution's witnesses were in unison in identifying accused-appellant as the person who shot Armando, Jr. Inconsistencies in the testimonies of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declarations or the veracity or the weight of their testimonies. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the accused. It was consistently testified to that the shooting happened so quickly, and that the witnesses' instinct were to seek cover from the bullets. Certainly, at such a sudden violent incident, this Court cannot expect the witnesses to focus on each and every specific detail of the incident. As aforesaid, what is relevant is the consistency in the testimony of the prosecution's witnesses to the effect that it was accused-appellant who shot the victim Armando, Jr. The inconsistencies in the testimonies of the prosecution's witnesses pointed out by accused-appellant with respect to the position of Armando, Jr., Lou and Sany, the number of shots fired against the victim, the reaction of accused-appellant's companions after the shooting, how the victim fell, and the exact location of the wounds, do not detract from the overwhelming testimonies of the prosecution's witnesses that accused-appellant came rushing from Sitio Ocampo and suddenly shot the victim. These inconsistencies are minor and inconsequential which even tend to bolster, rather than weaken, the credibility of the witnesses, for they show that such testimonies were not contrived or rehearsed.

3. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK ON AN UNARMED VICTIM WITHOUT THE SLIGHTEST PROVOCATION ON THE PART OF THE VICTIM; ESTABLISHED.— As to the presence of treachery, We find that the prosecution sufficiently established its existence in the commission of the crime. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. That *alevosia* or treachery attended the killing of the victim was apparent from the suddenness of the attack. Armando, Jr., the 12-year old victim, who was merely talking to his friends, was suddenly shot by the accused-appellant. The shooting in this case was deliberate, swift and sudden, denying the victim the opportunity to protect or defend himself. He was unarmed and unaware of the harm about to happen to him.

4. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED MUST PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED AND THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME.— Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail. In this case, suffice it to state that the defense failed to establish that it was physically impossible for the accused-appellant to have perpetrated the offense.

5. CRIMINAL LAW; REVISED PENAL CODE; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.— This Court resolves to modify the damages awarded by the appellate

court in line with the recent jurisprudence. Accused-appellant shall pay the heirs of Armando Kyamko, Jr. PhP75,000 as civil indemnity, PhP75,000 as moral damages, and PhP75,000 as exemplary damages for the crime of murder. The Court also deems it proper to award temperate damages in the amount of PhP50,000. While the records do not show that the prosecution was able to prove the amount actually expended for medical, burial and funeral expenses, prevailing jurisprudence nonetheless allows the Court to award temperate damages to the victim's heirs as it cannot be denied that they suffered pecuniary loss due to the crime committed. Further, all damages awarded shall earn interest at the rate of 6% per annum from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Paulino B. Labrador for accused-appellant.

D E C I S I O N

TIJAM, *J.*:

Accused-appellant Ambrosio Ohayas challenges in this appeal the August 30, 2012 Decision[1] promulgated by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01052, which affirmed with modification the February 9, 2009 Decision[2] of the Regional Trial Court (RTC), Branch 29 of Toledo City, in Criminal Case No. TCS-3042, 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 the victim, the amount of PhP50,000 as civil indemnity and PhP50,000 as moral damages.

---

[1] Penned by Associate Justice Edgardo Delos Santos and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida Galapate Laguilles; *rollo*, p. 316.

[2] Penned by Judge Nancy Rivas-Palmones, CA *rollo*, pp. 68-77.

The Antecedents

Accused-appellant was charged under the following information:

> That on or about the 31st day of May 1996, at around 8:00 in the evening, at Sitio Bonbon, Barangay Poblacion, Municipality of Pinamungajan, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to kill, by means of **treachery and evident premeditation**, conspiring, confederating and mutually helping one another, **with the use of superior strength**, did then and there willfully, unlawfully and feloniously shoot one ARMANDO KYAMKO, JR., with the use of a shotgun gauge 12, hitting the right portion of the latter's body, thereby causing instantaneous death.
>
> CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty.

The prosecution, in presenting its case, offered the testimonies of Sany Candelasa (Sany), Lou Managaytay (Lou), Nerissa Kyamko and Dr. Jesus P. Cerna (Dr. Cerna) and Armando Kyamko, Sr.

At around 8:00 o'clock in the evening of May 31, 1996, the 12-year old victim, Armando Kyamko, Jr. (Armando, Jr.), was with his friends, 15-year old Sany and 18-year old Lou relaxing and conversing under a kalachuchi tree along the national road in Sitio Bonbon, Pinamungajan, Cebu. Sany and Lou were seated under the tree, while Armando, Jr. was standing in front of them. The distance between them was approximately one arm's length. The place where the three lads were having a conversation was illuminated by the lights coming from the house of Sany. Aside from the three lads, there were several persons in the vicinity including the father of the victim, Armando, Sr., who was then at the opposite side of the road.

Suddenly, both Sany and Lou saw accused-appellant, Ohayas, a *balut* vendor in their place, with three other persons coming from Sitio Campo. Accused-appellant, together with his companions, walked towards the place where the three lads were conversing. Lou noticed that accused-appellant had in his hands a shotgun while his companions were carrying torches.

When accused-appellant's group was only seven arms' length away from the victim's group, accused-appellant suddenly, and without any warning, shot Armando Jr. who was hit in his right abdomen. Not contented, accused-appellant continued to fire at the victims who were shocked by the turn of events. Sany was hit on his right finger, while Lou, although not directly hit, nevertheless suffered injuries when the bullets ricocheted. After being hit, Armando Jr. managed to call his father for help before he fell to the ground. On the other hand, Sany and Lou ran to their respective houses to seek refuge.

Armando Jr. expired on the same night while still on board the vehicle on his way to Pinamungajan District Hospital. On the following day, an autopsy was conducted by Dr. Jesus Cerna, a medico-legal officer. After examination of the victim's cadaver, Dr. Cerna reduced his findings in Necropsy Report No. 96-N-109 which stated that the cause of death was shock secondary to shotgun (pellet) wounds on the body.

Accused-appellant fled the day after the incident and hid for three years until he was apprehended on February 6, 1999.

The defense, for its part, presented accused-appellant, Marcelina Ohayas, SPO3 Socrates Bancog (SPO3 Bancog), and Loreto Gines.

According to the accused-appellant, he was mauled at Sitio Bonbon, Pinamungajan, Cebu by a certain "Toper" prior to the shooting incident, and because of that, his cousins Eddie Yaguno, Florencio Owas, Jerry Yaguno, Roberto Owas and Cerilo Bolodo wanted to avenge him. Accused-appellant, however, prevented them from doing so.

On the day of the shooting, accused-appellant claimed that he was fishing at sea. At around 8 o'clock in the evening, he heard gunshots coming from Sitio Bonbon, Pinamungajan, Cebu. He felt afraid, so he stopped fishing and went home. On the way home, he was told by SPO3 Bancog that someone died in the shooting incident, and that accused-appellant was the one to be blamed. SPO3 Bancog further advised accused-appellant to take precautionary measures because the victim's relatives

might retaliate against him. He decided to take refuge at the house of his neighbor.

Accused-appellant further claimed that he was cooking fish when SPO3 Bancog and other policemen went to his house to investigate. He was not arrested but was advised to leave the place. His house was further searched for a shotgun, but the policemen did not find any.

Accused-appellant contended that it was Eddie Yaguno who killed the victim as he was the one who owned the shotgun.

Accused-appellant further explained that he transferred to Basak, Pedro several months after the shooting incident because he could no longer afford to pay rent.

On February 9, 2009, the RTC rendered judgment, finding accused-appellant guilty as charged and was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the family of the deceased the sum of PhP50,000 as moral damages.

On August 30, 2012, the CA rendered its Decision,[3] the dispositive portion of which states:

> WHEREFORE, in view of the foregoing, the decision of Regional Trial Court of Toledo City, Branch 29, in Criminal Case No.TCS-3042, insofar as it finds Ambrosio Ohayas guilty beyond reasonable doubt of the crime of murder and sentences him to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that appellant is ORDERED to pay the heirs of Ambrosio Ohayas (*sic*) the amount of ₱50,000.00 as civil indemnity. The award of ₱50,000.00 as moral damages, is likewise AFFIRMED.

The Court's Ruling

We deny the appeal.

The elements of the crime of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing

---

[3] *Supra*.

is not parricide or infanticide.[4] In this case, these requisites have been established by the prosecution.

Here, notwithstanding accused-appellant's attempt to highlight the inconsistencies, We find that the prosecution's witnesses were in unison in identifying accused-appellant as the person who shot Armando, Jr. Inconsistencies in the testimonies of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declarations or the veracity or the weight of their testimonies. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the accused.[5] It was consistently testified to that the shooting happened so quickly, and that the witnesses' instinct were to seek cover from the bullets. Certainly, at such a sudden violent incident, this Court cannot expect the witnesses to focus on each and every specific detail of the incident. As aforesaid, what is relevant is the consistency in the testimony of the prosecution's witnesses to the effect that it was accused-appellant who shot the victim Armando, Jr.

The inconsistencies in the testimonies of the prosecution's witnesses pointed out by accused-appellant with respect to the position of Armando, Jr., Lou and Sany, the number of shots fired against the victim, the reaction of accused-appellant's companions after the shooting, how the victim fell, and the exact location of the wounds, do not detract from the overwhelming testimonies of the prosecution's witnesses that accused-appellant came rushing from Sitio Ocampo and suddenly shot the victim. These inconsistencies are minor and inconsequential which even tend to bolster, rather than weaken, the credibility of the witnesses, for they show that such testimonies were not contrived or rehearsed.[6]

---

[4] *People v. Edgar Allen Alvarez*, G.R. No. 191060, February 2, 2015.

[5] *Eduardo Gulmatico y Brigatay v. People*, G.R. No. 146296, October 15, 2007.

[6] *People v. Fundador Camposano y Tiolanto*, G.R. No. 207659, April 20, 2016.

As to the presence of treachery, We find that the prosecution sufficiently established its existence in the commission of the crime. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure its execution, without risk to himself arising from the defense which the offended party might make.[7] The essence of treachery is the sudden and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.[8] That *alevosia* or treachery attended the killing of the victim was apparent from the suddenness of the attack. Armando, Jr., the 12-year old victim, who was merely talking to his friends, was suddenly shot by the accused-appellant. The shooting in this case was deliberate, swift and sudden, denying the victim the opportunity to protect or defend himself. He was unarmed and unaware of the harm about to happen to him.

In this case, the prosecution was able to clearly establish that: (1) Armando, Jr. was shot and killed; (2) the accused-appellant was the person who killed him; (3) Armando, Jr.'s killing was attended by the qualifying circumstance of treachery; and (4) the killing of Armando, Jr. was neither parricide nor infanticide.

In contrast to the evidence adduced by the prosecution, accused-appellant could only muster the defense of denial and alibi. Accused--appellant claims that he was fishing during the shooting incident, and that it was his cousins, his co-accused in the court *a quo*, Eddie Yaguno, Florencio Owas, Jerry Yaguno, Roberto Owas and Cerilo Bolodo, who were responsible for the victim's demise.

Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at

---

[7] *People v. Rosalito Caboquin y Del Rosario*, G.R. No. 137613, November 14, 2001.

[8] See *People v. Mariano Toyco, Sr.*, G.R. No. 138609, January 17, 2001.

the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[9]

In this case, suffice it to state that the defense failed to establish that it was physically impossible for the accused-appellant to have perpetrated the offense.

This Court resolves to modify the damages awarded by the appellate court in line with the recent jurisprudence.[10] Accused-appellant shall pay the heirs of Armando Kyamko, Jr. PhP75,000 as civil indemnity, PhP75,000 as moral damages, and PhP75,000 as exemplary damages for the crime of murder. The Court also deems it proper to award temperate damages in the amount of PhP50,000. While the records do not show that the prosecution was able to prove the amount actually expended for medical, burial and funeral expenses, prevailing jurisprudence nonetheless allows the Court to award temperate damages to the victim's heirs as it cannot be denied that they suffered pecuniary loss due to the crime committed.[11] Further, all damages awarded shall earn interest at the rate of 6% per annum from the date of the finality of this judgment until fully paid.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals dated August 30, 2012 in CA-G.R. CR H.C. No. 01052 is **AFFIRMED** with **MODIFICATION** in that accused-appellant is hereby ordered to pay the heirs of the victim the amount of PhP75,000 as civil indemnity for the death of the victim; moral damages in the amount of PhP75,000, exemplary damages in the amount of PhP75,000, and PhP50,000 as temperate damages, in lieu of actual damages.

---

[9] *People v. Alberto Anticamara y Cabillo*, G.R. No. 178771, June 8, 2011.

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

[11] *People v. Yolanda Libre*, G.R. No. 192790, August 1, 2016.

All damages awarded shall earn interest at the legal rate of 6% per annum from the finality of this judgment until fully paid.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 208001. June 19, 2017]

P/C SUPT. EDWIN A. PFLEIDER, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; DETERMINATION OF PROBABLE CAUSE FOR MURDER; IN VIEW OF THE CONTRASTING FINDINGS OF THE CA AND THE RTC THEREON, COURT DEEMS IT APPROPRIATE TO REMAND THE CASE TO THE TRIAL COURT FOR ITS PROPER DISPOSITION BASED ON THE EVIDENCE PRESENTED BY THE PROSECUTION.— Basically, what the petitioner and the respondent want from this Court is for it to review the facts and to finally determine whether a probable cause really exists in the case against petitioner for murder. Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of

---

[*] Designated as additional member as per Raffle dated March 15, 2017.

jurisdiction. x x x It must be emphasized that this Court is not a trier of facts. The determination of probable cause is and will always entail a review of the facts of the case. The CA, in finding probable cause, did not exactly delve into the facts of the case but raised questions that would entail a more exhaustive review of the said facts. x x x In this case, the judge of the RTC, not finding the existence of probable cause, outrightly dismissed the case. The contrasting findings of the CA and the RTC is well noted and from the very provision of the Rules of Court, the remedy, in case of doubt, is for the judge to order the prosecutor to present additional evidence. Therefore, in the interest of justice, this Court finds it appropriate to remand the case to the trial court for its proper disposition, or for a proper determination of probable cause based on the evidence presented by the prosecution. This is not the first time that this Court has remanded a case to the trial court for it to make a ruling on whether certain Informations should be dismissed or not.

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

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR CERTIORARI UNDER RULE 65 IS NOT A REMEDY OR SUBSTITUTE FOR A LOST APPEAL; CASE AT BAR.— Similar to [*Santos v.*] *Orda*, the instant case was dismissed by the RTC for lack of probable cause. The motion for reconsideration of the prosecution was likewise dismissed by the RTC. And just like in *Orda*, the Solicitor General filed a Petition for Certiorari under Rule 65 of the Rules of Court with the CA instead of filing an appeal via Rule 122 of the Revised Rules of Court within 15 days from receipt of the Order dismissing the motion for reconsideration. The Order denying the prosecution's motion for reconsideration was received by the prosecution on October 26, 2011. Pursuant to Section 6 of Rule 122 and the "fresh period rule," the prosecution had until November 10, 2011 to perfect their appeal. However, instead of filing the appeal, the prosecution opted to file the Petition for Certiorari with the CA on December 23, 2011, or **57 days** after the receipt of the Order. **From the foregoing, the prosecution lost its right to appeal and cannot remedy the lost appeal by filing a petition for certiorari alleging grave abuse of discretion against [the] Judge.**

2. ID.; ID.; ID.; ISSUES OF FACTS, NOT ACCEPTED; EXCEPTIONS; FINDINGS OF THE RTC AND THE CA ARE CONTRADICTORY.— While this Court, as a general rule, is not a trier of facts, the instant case clearly falls within the exceptions to the general rule. x x x It is quite evident that the instant petition falls under the exceptions because the findings of the RTC and the CA are manifestly contradictory. The RTC dismissed the case while the CA found probable cause and ordered the reinstatement of the criminal Information against petitioner Pfleider. Moreover, the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

3. ID.; ID.; ID.; ID.; ID.; THE COURT NEED NOT REMAND A CASE WHERE IT IS IN A POSITION TO RESOLVE THE DISPUTE BASED ON THE RECORDS BEFORE IT.— It is an established rule for this Court not to remand cases where it is in a position to resolve the dispute based on the records before it. There are several reasons that rationalize this doctrine. x x x [Thus,] remanding a case is not warranted when doing so can result in multiple, unending, or contradicting determinations of factual issues.

4. ID.; EVIDENCE; HEARSAY EVIDENCE; HEARSAY TESTIMONY IS INADMISSIBLE IN EVIDENCE.— In *People v. Manhuyod, Jr.*, hearsay evidence is defined as "evidence not of what the witness knows himself but of what he has heard from others." Likewise, Section 36, Rule 130 of the Rules of Court provides that a witness can testify only to those facts which he knows of his own personal knowledge. Hence, the hearsay rule bars the testimony of a witness who merely recites what someone else has told him. The rule that hearsay testimony is inadmissible in evidence is fundamental.

5. ID.; CRIMINAL PROCEDURE; WARRANT OF ARREST; ISSUANCE ONLY UPON THE EXISTENCE OF PROBABLE CAUSE.— Probable cause, for purposes of issuance of warrant of arrest, has been defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. It is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for arresting the accused. The requirement that a warrant of arrest can issue only upon the

existence of probable cause is a protection against false arrest enshrined in no less than Section 2, Article III of the Constitution.

6. ID.; ID.; COMPLAINT OR INFORMATION; RULE THAT ALL PERSONS WHO APPEAR TO BE RESPONSIBLE FOR THE OFFENSE SHALL BE INCLUDED THEREIN; VIOLATED IN CASE AT BAR.— In reviewing the records of this case, the Amended Information took more than two (2) years for the prosecution to amend Bautista's Information solely causing the murder of Granados to conspiring with other persons to commit the crime. Most remarkably, the Amended Information intentionally left Pfleider's name unmentioned, again We quote: "*another person whose true name, identity and whereabouts are still unknown*." This Amended Information is a patent violation of Section 2, Rule 110 of the Rules on Criminal Procedure which states: "*The complaint or information shall be in writing, in the name of the People of the Philippines against all persons who appear to be responsible for the offense involved*." Likewise, Section 6 of the same rule also provides that: "*When an offense is committed by more than one person, all of them shall be included in the complaint or information*."

APPEARANCES OF COUNSEL

Salatandre and Associates Law Office for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 23, 2013, of petitioner P/C Supt. Edwin A. Pfleider (Ret.) assailing the Decision dated October 23, 2012 and Resolution dated June 26, 2013, both of the Court of Appeals (*CA*).

The facts follow.

An Information for Murder against petitioner and Ryan Bautista was filed on April 18, 2011 before the Regional Trial Court (*RTC*) of Tacloban City, which reads as follows:

That on or about the 15th day of September 2010 or prior thereto, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and by offering a price, reward or consideration to Ryan O. Bautista (Crim. Case No. 2010-09-497) and mutually helping one another, with intent to kill and with the qualifying circumstance of treachery, evident premeditation, while Ryan O. Bautista was armed with an unlicensed firearm, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one Manuel Granados with the use of said unlicensed firearm and inflicting upon the said victim fatal wounds on different parts of his body, which resulted to his untimely death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.

The RTC dismissed the case for lack of probable cause against petitioner in a Resolution dated September 5, 2011.

The prosecution filed a Motion for Reconsideration on September 26, 2011 praying for the reinstatement of the case, but the Court denied the said motion on October 26, 2011.

A petition for *certiorari* under Rule 65 of the Rules of Court was therefore filed with the CA. The petition was grounded on grave abuse of discretion amounting to lack or excess of jurisdiction, since (a) the questioned resolution and order: (i) discarded and ignored vital evidence and the authority of the public prosecutor in determining the existence of probable cause; (ii) excluded the extra-judicial confession executed by petitioner's co-accused, Ryan Bautista, despite the presumed voluntariness and due execution thereof; and (iii) failed to give weight and consideration to other vital pieces of evidence evincing trustworthiness of Bautista's extra-judicial confession and establishing petitioner's complicity; and (b) the manifest presence of probable cause supports the charge of murder as against petitioner.

On March 19, 2012, petitioner filed his Comment/Opposition and, on April 23, 2012, respondent filed its Reply to which petitioner filed a Rejoinder dated May 23, 2012.

The CA, in its Decision dated October 24, 2012, set aside the September 5, 2011 Resolution and October 26, 2011 Order

of the trial court, and directed the reinstatement of the Information for Murder against petitioner.

Petitioner, on November 26, 2012, filed a Motion for Reconsideration on the CA's decision. Respondent, on the other hand, filed an Urgent Motion for the Issuance of a Warrant of Arrest on November 29, 2012. Petitioner responded by filing an Opposition dated December 8, 2012, and a Supplemental Motion for Reconsideration dated January 24, 2013. In a Resolution dated February 4, 2013, the CA resolved, among others, to Note the Office of the Solicitor General's (OSG) Motion for the Issuance of a Warrant of Arrest.

On March 7, 2013, respondent filed its Comment to petitioner's motion for Reconsideration and Supplemental Motion and, in response, petitioner filed his Reply dated March 21, 2013.

The CA, in a Resolution dated June 26, 2013, denied the Motion for Reconsideration for lack of merit, there being no legal and factual basis for the Court to depart from its earlier ruling reinstating Criminal Case No. 2011-04-286 for Murder against petitioner.

Hence, the present Petition.

This Court, in a Resolution dated September 2, 2013, resolved "to DENY the petition and AFFIRM the ruling of the Court of Appeals promulgated on October 23, 2012 for failure to show any reversible error committed by it when it held that the Regional Trial Court, Branch 9 of Tacloban City committed grave abuse of discretion in dismissing the case against Edwin A. Pfleider despite the presence of probable cause linking him as one of the perpetrators of the crime charged against him."[1] Thus, petitioner filed a Motion for Reconsideration dated October 8, 2013.[2]

In a Resolution dated December 11, 2013, this Court resolved to "GRANT the Motion for Reconsideration and SET ASIDE the Resolution dated September 2, 2013, REINSTATE the

---

[1] *Rollo*, p. 909.

[2] *Id*. at 912-978.

petition and to require the Office of the Solicitor General to COMMENT thereon within ten (10) days from notice."[3]

A Motion for Extension[4] dated February 4, 2014 was filed by the OSG which was granted by this Court in its Resolution[5] dated March 24, 2014.

The OSG filed its Comment[6] dated April 2, 2014, while the petitioner filed his Reply[7] dated May 15, 2014.

Petitioner raises the following Assignment of Errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING DUE COURSE AND NOT DISMISSING THE PETITION FOR CERTIORARI FILED BY THE OFFICE OF THE SOLICITOR GENERAL AS THE SAME IS NOT THE PROPER REMEDY, AND CANNOT BE AVAILED OF AS A SUBSTITUTE FOR THE LOST REMEDY OF AN APPEAL;

II.

ASSUMING THAT PETITION FOR CERTIORARI CAN BE AVAILED IN LIEU OF A LOST APPEAL, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON OF BRANCH 9, REGIONAL TRIAL COURT, TACLOBAN CITY, COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE DISMISSED THE CRIMINAL CASE FOR MURDER WITH NO. 2011-04-268 AGAINST HEREIN PETITIONER FOR LACK OF PROBABLE CAUSE;

III.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON ARROGATED UPON HIMSELF THE EXECUTIVE FUNCTION OF DETERMINING PROBABLE CAUSE, AND ALLEGEDLY

---

[3] *Id*. at 979.

[4] *Id*. at 980-985.

[5] *Id*. at 986.

[6] *Id*. at 987-1035.

[7] *Id*. at 1043-1113.

ASSUMED THE POWER TO PROSECUTE VESTED IN THE EXECUTIVE DEPARTMENT; AND

IV.

THE HONORABLE COURT OF APPEALS LIKEWISE ERRED IN HOLDING THAT PROBABLE CAUSE EXISTS, AND THAT PROSECUTION WAS ALLEGEDLY ABLE TO PROFFER SUFFICIENT BASIS TO ESTABLISH, MORE LIKELY THAN NOT, A LINK BETWEEN PETITIONER AND RYAN BAUTISTA WITH RESPECT TO THE KILLING OF MANUEL GRANADOS.

The OSG, in its Comment, posited the following arguments:

I.

A SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 IS THE PROPER REMEDY TO CORRECT ERRORS OF JURISDICTION WHICH, IN THIS CASE, ARE DEMONSTRATED BY THE TRIAL COURT IN:

A. EXERCISING THE EXECUTIVE FUNCTION OF DETERMINING THE EXISTENSE OF PROBABLE CAUSE IN SUPPORT OF THE MURDER CHARGE;

B. IGNORING AND DISREGARDING THE EXTRA-JUDICIAL CONFESSION OF PETITIONER'S CO-ACCUSED, RYAN BAUTISTA; AND

C. REJECTING THE SAID EXTRA-JUDICIAL CONFESSION DESPITE ITS PRESUMED AND MANIFEST VOLUNTARINESS AND DUE EXECUTION;

II.

WELL ENTRENCHED IS THE RULE THAT MINOR AND TRIVIAL INCONSISTENCIES IN THE STATEMENTS OF PROSECUTION WITNESSES DO NOT WEAKEN, BUT RATHER STRENGTHEN THEIR CREDIBILITY;

III.

THE EVIDENCE ON RECORD SHOWS THAT, MORE LIKELY THAN NOT, CRIME CHARGED HAS BEEN COMMITTED AND THAT RESPONDENT IS PROBABLY GUILTY OF THE SAME, THE JUDGE SHOULD NOT DISMISS THE CASE;

IV.

THE CIDG IS PRESUMED TO HAVE PERFORMED ITS OFFICIAL FUNCTIONS REGULARLY AND IN ACCORDANCE WITH LAW.

Basically, what the petitioner and the respondent want from this Court is for it to review the facts and to finally determine whether a probable cause really exists in the case against petitioner for murder.

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[8] This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final.[9] There are, however, exceptions to this rule. Among the exceptions are enumerated in *Brocka v. Enrile*.[10]

---

[8] *Roberts, Jr. v. CA*, 324 Phil. 568, 615 (1996).

[9] *Id*.

[10] G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189.

a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano, et al.*, 125 Phil. 513 [1967].

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304 [1922]; *Hernandez v. Albano, supra*; *Fortun v. Labang, et al.*, 192 Phil.125 [1981];

c. When there is a pre-judicial question which is *sub judice* (*De Leon v. Mabanag*, 70 Phil. 202 [1940]);

d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62 [1938]);

e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556 [1916]; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389 [1925]);

f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140 [1960]);

g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, 124 Phil. 1211 [996]).

h. Where it is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

However, a close examination of the arguments presented by both parties would show that the present case does not fall under any of the above-cited exceptions. Furthermore, in this case, this Court is once again confronted with the often raised issue of the difference between the determination of probable cause by the prosecutor on one hand and the determination of probable cause by the judge on the other. To have a clearer view on the matter, see the case of *Mendoza v. People of the Philippines, et al.*[11]

It must be emphasized that this Court is not a trier of facts. The determination of probable cause is and will always entail a review of the facts of the case. The CA, in finding probable cause, did not exactly delve into the facts of the case but raised questions that would entail a more exhaustive review of the said facts. It ruled that, "*Questions remain as to why, among all people, Ryan would implicate Pfelider as the inducer and why the other witnesses would associate Pfleider to the crime*."[12] From this query, the CA has raised doubt. Under the Revised Rules on Criminal Procedure,

> Section 6. *When warrant of arrest may issue*. — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information

---

i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J., [1953], cited in *Rañoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; *Cf. Guingona, Jr., et al. v. City Fiscal of Manila, et al.*, 213 Phil. 516 [1984]); and

j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga v. Paño, et al.*, No. 59524, February 18, 1985, 134 SCRA 438).

[11] 733 Phil. 603 (2014).

[12] *Rollo*, p. 125.

was filed pursuant to Section 7 of this Rule. **In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence** within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.[13]

In this case, the judge of the RTC, not finding the existence of probable cause, outrightly dismissed the case. The contrasting findings of the CA and the RTC is well noted and from the very provision of the Rules of Court,[14] the remedy, in case of doubt, is for the judge to order the prosecutor to present additional evidence. Therefore, in the interest of justice, this Court finds it appropriate to remand the case to the trial court for its proper disposition, or for a proper determination of probable cause based on the evidence presented by the prosecution. This is not the first time that this Court has remanded a case to the trial court for it to make a ruling on whether certain Informations should be dismissed or not.[15]

Thus, it is my view that the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 23, 2013, of petitioner P/C Supt. Edwin A. Pfleider (Ret.), should have been granted in so far as his prayer to set aside the Decision dated October 23, 2012 and Resolution dated June 26, 2013, both of the Court of Appeals; and for this Court to order that this case be remanded to the Regional Trial Court of Tacloban City for the judicial determination of probable cause and the proper disposition of the same case. However, in view of the demise of P/C Supt. Edwin A. Pfleider on April 15, 2017, which effectively extinguished his criminal liability, this case had been rendered moot and academic. Thus, the criminal action against him should just be dismissed, and deemed closed and terminated inasmuch as there is no longer a defendant to stand as the accused.

---

[13] Sec. 6, Rule 112.

[14] *Id.* (Emphasis ours)

[15] See *People of the Philippines, et al. v. Panfilo M. Lacson.*, 432 Phil. 113, 131 (2002).

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 23, 2013 of petitioner P/C Supt. Edwin A. Pfleider (Ret.) is hereby **GRANTED** insofar as his prayer to **SET ASIDE** the Decision dated October 23, 2012 and Resolution dated June 26, 2013, both of the Court of Appeals. However, considering the demise of P/C Supt. Edwin A. Pfleider, instead of remanding the case to the Regional Trial Court of Tacloban city for the determination of probable cause, the criminal action is **DISMISSED**, there being no defendant to stand as accused.[16]

SO ORDERED.

Mendoza, Perlas-Bernabe, and *Leonen, JJ.*, concur.

Velasco, Jr. (Chairperson), J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

I respectfully register my dissent from the position of the majority.

At the onset, the counsel of petitioner P/C Supt. Edwin A. Pfleider (Pfleider) filed a Manifestation dated April 21, 2017 informing the Court that his client passed away on April 15, 2017. As such, any criminal liability which petitioner Pfleider may have by reason of Criminal Case No. 2011-04-268 had already been extinguished. Nevertheless, the Court, as the final adjudicator, must resolve the petition on its merits in order to fulfill its bounden duty to put an end to unsettled judicial controversies, especially so if it is in the pursuit of clearing the name of an innocent man before he is laid to rest.

Nature of the Petition

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision

[16] See *People v. Layag*, G.R. No. 214875, October 17, 2016. See also Article 89 (1) of the Revised Penal Code.

dated October 23, 2012 and Resolution dated June 26, 2013 issued by the Court of Appeals (CA) in CA-G.R. SP No. 06544. The assailed Decision reversed and set aside the Resolution dated September 5, 2011 and Order dated October 26, 2011 of the Regional Trial Court (RTC) of Tacloban City, Branch 9 in Criminal Case No. 2011-04-268 dismissing the case against petitioner Pfleider for lack of probable cause.

The Facts

This criminal case arose from a Complaint-Affidavit for Murder dated October 6, 2010 filed against petitioner Pfleider before the Department of Justice (DOJ) implicating him in the killing of the victim, Manuel S. Granados (Granados). The Complaint alleged that it was petitioner Pfleider who induced accused Ryan 0. Bautista (Bautista) to kill Granados by means of price, reward, or promise.

The facts of the case are as follows:

At around 7:00 a.m. of September 15, 2010, Granados was fatally shot by Bautista in front of his home in Tacloban City. After the shooting, Bautista attempted to flee the crime scene but was unsuccessful because his getaway motorcycle failed to start its engine. A neighbor of the victim, Butch Price, came to the rescue and shot and wounded Bautista. Granados was immediately rushed to the Divine Word Hospital for emergency medical treatment but was declared dead by the attending physician. On the other hand, Bautista was brought to the Eastern Visayas Regional Medical Center for treatment of the gunshot wound he sustained from Butch Price.

On the same day, SPO2 Norman Loy Fevidal interviewed Bautista while the latter was still confined and under medication in the hospital. Bautista executed an extrajudicial confession, or his First Affidavit, in a Question and Answer format based on the interview. In his First Affidavit, Bautista implicated petitioner Pfleider as the alleged mastermind of the assassination. He claimed that Pfleider induced him by means of a price, reward or promise of sixty thousand pesos (₱60,000) for the hit.

On September 16, 2010, Rex M. Gillamac (Gillamac) surfaced and gave his statement alleging that he was the one who introduced Bautista to Pfleider. He also claimed that he was with Bautista during a surveillance they conducted on Granados during the second week of July 2010.

On September 17, 2010, a criminal Information for murder was filed against Bautista with the Tacloban City RTC, Branch 9.

On September 18, 2010, Bautista, assisted by Atty. Abet Hidalgo, executed a Second Affidavit, an **Affidavit of Recantation**, wherein he claimed that the persons who previously interviewed him for his first affidavit were already carrying with them a prepared affidavit implicating Pfleider as the mastermind in the shooting of Granados. He alleged that he was pressured and threatened that he will be executed on an electric chair if he did not agree to implicate petitioner. He also alleged that the First Affidavit was not read to him and the contents thereof were not explained to him. Further, he claimed that he did not know if there was a lawyer present during the time of his first interview and he was not given a copy of said affidavit.

On September 28, 2010, a certain Jimmy Atoy (Atoy), a junkshop helper and mechanic for Maning's Enterprises, executed an affidavit and claimed that the motorcycle used during the shooting incident was bought from the store where he was employed. He further alleged that it was petitioner Pfleider who personally handed him the money to be paid to the cashier Catherine Delos Santos (Catherine) for the purchase of the motorcycle.

On October 6, 2010, Evelyn Granados (Evelyn) and Jeric Dane Granados (Jeric), the wife and daughter of the victim, respectively, filed a Complaint-Affidavit with the DOJ against petitioner Pfleider, alleging that the motive for the crime is business rivalry. Private complainants submitted the First Affidavit of Bautista, the Affidavit of Gillamac dated September 16, 2010, and the Affidavit of Atoy dated September 28, 2010, among others.

In his Counter-Affidavit and Rejoinder-Affidavit dated December 15, 2010 and February 2, 2011, respectively, petitioner Pfleider denied any involvement in the crime. He claimed that the arguments of the complainants were mere suppositions and unwarranted presumptions, speculations, and conjectures. He also stated that the statements of the witnesses were mere afterthoughts and obviously scripted and supplied to suit the malicious case against him. He also said that the allegations were all factually and legally unfounded and, thus, bereft and unworthy of any credence and belief.

During the course of the preliminary investigation, private complainants submitted Bautista's Third Affidavit dated January 12, 2011.

Meanwhile, a Resolution dated April 11, 2011 was issued by Asst. State Prosecutor Rex Gingoyon finding that probable cause for murder against petitioner Pfleider exists, and caused the filing of an Information with the Tacloban City Regional Trial Court, raffled to Branch 9.

On April 19, 2011, petitioner Pfleider filed with the RTC an Omnibus Motion to Defer Proceedings and Issuance of Warrant of Arrest. Subsequently, petitioner Pfleider filed on April 28, 2011 a Manifestation and Supplemental Motion to the Omnibus Motion wherein he attached the Affidavit of one Renato Mendoza[1] (Mendoza) dated April 26, 2011. Mendoza, in his Affidavit, denied the allegation of PO3 Felizardo Sacris (Sacris) that he supplied the caliber .45 pistol MKIV, Series 80 with Serial Number 120876, or any other firearm, to Sacris.

Meanwhile, petitioner Pfleider assailed the findings of Asst. State Prosecutor Gingoyon and filed a petition for review with the DOJ.

After conducting a full evaluation of the evidence submitted by both the prosecution and petitioner Pfleider to determine the existence of probable cause for purposes of issuance of warrant of arrest, the RTC, in a Resolution dated September 5, 2011,

---

[1] Annex "K" of the Petition for Review on *Certiorari*.

dismissed the case against petitioner for lack of probable cause. The dispositive portion of said Resolution states:

WHEREFORE, in view of the foregoing, this Court finds no probable cause against accused **P/C SUPT. EDWIN A. PFLEIDER (Ret.)** and accordingly, this Court hereby **DISMISSES** this case.

SO ORDERED.

The Motion for Reconsideration filed by the prosecution was denied in an Order dated October 26, 2011.

On December 23, 2011, respondent People of the Philippines, through the Office of the Solicitor General (OSG), filed a Special Civil Action for Certiorari under Rule 65 of the Revised Rules of Court with the CA.

In the meantime, the Secretary of Justice issued a Resolution dated May 4, 2012 on the petition for review filed by petitioner Pfleider ruling that since the trial court has dismissed the case, which ruling it concurs with, the petition for review has become moot and academic.

In a Decision[2] dated October 23, 2012, the CA granted the Petition for Certiorari reversing and setting aside the RTC's Resolution dated September 5, 2011 and Order dated October 26, 2011. The dispositive portion of the Decision reads:

WHEREFORE, the petition is **GRANTED**. The September 5, 2011 Resolution and October 26, 2011 Order of the Regional Trial Court, Branch 9, Tacloban City are **SET ASIDE**. Criminal Case No. 2011-04-268 for MURDER against Ret. P/C Supt. Edwin A. Pfleider is **REINSTATED**.

SO ORDERED.

Petitioner filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, on which the OSG filed its Comment.

---

[2] Penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy.

Meanwhile, on January 21, 2013, Asst. State Prosecutor Gingoyon filed with Branch 8 RTC of Tacloban City an Amended Information against Bautista. The Information now reads as follows:

AMENDED INFORMATION

The undersigned Assistant State Prosecutor acting as the City Prosecutor of Tacloban City per DOJ D.O. No. 472 dated June 10, 2011, accuses **RYAN BAUTISTA y OSTOLANO** of the crime of **MURDER**, committed as follows:

That on or about the 15th day of September, 2010 or prior thereto, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and who was offered a price, reward or consideration by another person whose true name, identity and whereabouts are still unknown and mutually helping one another, with intent to kill and with the qualifying circumstance of treachery, evident premeditation and with the use of an unlicensed firearm intended for that purpose, did then and there willfully, unlawfully and feloniously attack, assault and fire upon the herein victim Manuel "Boyen" Granados with the said unlicensed firearm (handgun) hitting him on the different parts of his body, causing him to sustain several gunshot wounds thereon which resulted to this untimely death, to the damage and prejudice of his heirs. (underscoring supplied)

On January 25, 2013, Bautista was arraigned on the newly amended Information, assisted by his counsel Atty. Gaspay. He was read the Information in the vernacular he knows, speaks and understands, to which he pleaded "NOT GUILTY."

The CA issued a Resolution dated June 26, 2013 denying petitioner Pfleider's Motion for Reconsideration and Supplemental Motion for Reconsideration. Hence, the filing of the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court with this Court.

Grounds for the Petition

Petitioner raises the following grounds to support his petition, to wit:

I.

THE [CA] GRAVELY ERRED IN GIVING DUE COURSE AND NOT DISMISSING THE PETITION FOR CERTIORARI FILED BY THE [OSG] AS THE SAME IS NOT THE PROPER REMEDY, AND CANNOT BE AVAILED OF AS A SUBSTITUTE FOR THE LOST REMEDY OF AN APPEAL;

II.

ASSUMING THAT PETITION FOR CERTIORARI CAN BE AVAILED IN LIEU OF A LOST APPEAL, THE [CA] GRAVELY ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON OF BRANCH 9, REGIONAL TRIAL COURT, TACLOBAN CITY, COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE DISMISSED CRIMINAL CASE FOR MURDER WITH NO. 2011-04-268 AGAINST HEREIN PETITIONER FOR LACK OF PROBABLE CAUSE;

III.

THE [CA] ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON ARROGATED UPON HIMSELF THE EXECUTIVE FUNCTION OF DETERMINING PROBABLE CAUSE, AND ALLEGEDLY ASSUMED THE POWER TO PROSECUTE VESTED IN THE EXECUTIVE DEPARTMENT; AND

IV.

THE [CA] LIKEWISE ERRED IN HOLDING THAT PROBABLE CAUSE EXISTS, AND THAT PROSECUTION WAS ALLEGEDLY ABLE TO PROFFER SUFFICIENT BASIS TO ESTABLISH, MORE LIKELY THAN NOT, A LINK BETWEEN PETITIONER AND RYAN BAUTISTA WITH RESPECT TO THE KILLING OF MANUEL GRANADOS.[3]

In answer to the petition, the OSG filed its Comment dated April 2, 2014 to which petitioner Pfleider filed his Reply on May 14, 2014.

Discussion

I vote to grant the petition.

---

[3] *Rollo*, pp. 15-16.

Petition for Certiorari under Rule 65 is not a remedy or substitute for a lost appeal

The instant petition is similar to *Santos v. Orda*[4] wherein the RTC dismissed the case for murder on the ground that no probable cause existed to indict the accused. In that case, the prosecution filed a motion for reconsideration, which was denied. Aggrieved by the Decision of the RTC, the OSG filed a Petition for Certiorari under Rule 65 with the CA claiming that the RTC committed grave abuse of discretion in finding that no probable cause existed against the accused. The CA thereafter granted said petition. However, this Court reversed and set aside the decision of the CA holding that:

> ... the petition for certiorari filed by respondent under Rule 65 of the Rules of Court is inappropriate. **It bears stressing that the Order of the RTC, granting the motion of the prosecution to withdraw the Information and ordering the case dismissed, is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done by the court. Thus, the proper remedy is appeal.**[5] (emphasis supplied)

Similar to *Orda*, the instant case was dismissed by the RTC for lack of probable cause. The motion for reconsideration of the prosecution was likewise dismissed by the RTC. And just like in *Orda*, the Solicitor General filed a Petition for Certiorari under Rule 65 of the Rules of Court with the CA instead of filing an appeal via Rule 122 of the Revised Rules of Court within 15 days[6] from receipt of the Order dismissing the motion for reconsideration.

The Order denying the prosecution's motion for reconsideration was received by the prosecution on October 26, 2011. Pursuant to Section 6 of Rule 122 and the "fresh

---

[4] G.R No. 189402, May 6, 2010, 620 SCRA 375.

[5] *Id*. at 383.

[6] Section 6. When appeal to be taken. An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from.

period rule,"[7] the prosecution had until November 10, 2011 to perfect their appeal. However, instead of filing the appeal, the prosecution opted to file the Petition for Certiorari with the CA on December 23, 2011, or **57 days** after the receipt of the Order.

From the foregoing, the prosecution lost its right to appeal and cannot remedy the lost appeal by filing a petition for certiorari alleging grave abuse of discretion against Judge Rogelio C. Sescon. Remarkably, the prosecution misrepresented in its petition for certiorari that "*there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law*."[8] The prosecution, despite feigning innocence or ignorance, obviously knew that it had the opportunity to use the remedy of appeal under Section 6, Rule 122, yet it failed to use it. An appeal is, in fact, the speediest and most adequate remedy the prosecution should have availed of. However, the prosecution let the 15-day period lapse and opted to use the 60-day period for filing a petition for certiorari, which is hardly the speedy remedy that the prosecution complained of. Consequently, with the expiration of the 15 days provided by the Rules of Court for it to file an appeal, the Resolution of the RTC finding no probable cause against Pfleider became final and terminated the proceedings therein. The prosecution is now precluded from using the extraordinary remedy of certiorari under Rule 65.

The CA cannot invoke the liberalization of the Rules merely based on an allegation of serving the "broader interest of justice" in order to rule on the merits instead of dismissing the petition outright. By allowing the wrong mode of appeal to remedy a lost appeal, the CA is guilty of denying justice to Pfleider. The pronouncement that no probable cause existed cannot be deemed as a grave abuse of discretion since Judge Sescon fully studied and evaluated all the relevant evidence submitted to his sala.

---

[7] *Neypes v. Court of Appeals*, G.R. No. 241524, April 14, 2005, 469 SCRA 633, 641.

[8] *Rollo*, p. 715.

The DOJ, in its Resolution dated May 4, 2012, even agreed to the findings of Judge Sescon that no probable cause existed and that the petition for review was moot and academic. The DOJ held:

x x x In said case, **Judge Rogelio C. Sescon issued a Resolution dated September 5, 2011, which found no probable cause against respondent P/CSupt. Edwin Pfleider (Ret.)**.

The Court's Resolution, **to which we agree**, renders the petition for review moot and academic. As held by the Supreme Court in Sps. Freddie & Elizabeth Webb, et al. vs. Secretary of Justice, et al., G.R. No. 139120, July 31, 2003, "once a complaint or information is filed in court, however, as in the present case, any disposition of the case-be it dismissal of the case, or conviction or acquittal of the accused-rests on the sound discretion of the court. For although the prosecutor of criminal cases even while the case is already in court, he cannot impose his opinion on the **trial court which is the final arbiter on whether or not to proceed with the case.**" (emphasis supplied)

In reversing the RTC and at the same time basing such reversal on a superficial review of the evidence, the CA committed grave abuse of discretion in failing to deny the petition for certiorari.

The Court has authority to resolve the issues and a remand of the case to the trial Court is not warranted because the record is sufficient to render judgment

While this Court, as a general rule, is not a trier of facts, the instant case clearly falls within the exceptions to the general rule.

In the seminal case of *The Insular Assurance Company, Ltd v. Court of Appeals*,[9] this Court had the occasion to expound on the instances that are deemed as exceptions to the generally accepted rule that this Court cannot evaluate issues of facts, namely:

x x x (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly

[9] G.R. No. 126850, April 28, 2004, 428 SCRA 79.

mistaken, absurd or impossible; (3) **when there is grave abuse of discretion**; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the 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.**[10] (emphasis supplied)

It is quite evident that the instant petition falls under the above-stated exceptions because the findings of the RTC and the CA are manifestly contradictory. The RTC dismissed the case while the CA found probable cause and ordered the reinstatement of the criminal Information against petitioner Pfleider.

Moreover, the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Looking at the Decision of the CA dated October 23, 2012, the CA obviously failed to examine exhaustively the affidavits of the witnesses, which, if properly examined, would show glaring inconsistencies. In reversing a trial court's decision based on the facts and evidence submitted to the court, the appellate court should review and explain substantially the reason for its reversal by showing the errors the trial court made in rendering its decision. In the herein CA Decision, the pieces of evidence examined were superficially explained and merely enumerated. The CA stated the following:

First, the testimony of Jimmy Atoy deposing that the get-away vehicle used by Ryan was the same vehicle bought by Pfleider from their store and it was Pfleider's instruction that the receipt and invoice

[10] *Id*. at 86.

be named after Ryan. Second, PO3 Sacris attested that Pfleider sent him to a gunsmith to get a gun which was later identified as the same gun used to kill the victim Manuel. Third, Rex Gillamac averred that Ryan told him about Pfleider's order to kill Manuel for ₱50,000.00[11] x x x

Had the CA carefully considered the evidence on record, it would have arrived at a different conclusion. Studying the evidentiary basis that the CA relied upon, it should have seen that: *first*, Atoy, the mechanic/janitor of Maning's Enterprises, claimed that he allegedly received ₱30,000 from petitioner Pfleider and gave the same to the cashier, Catherine. Thereafter, he stated that petitioner Pfleider allegedly ordered Catherine to place Bautista's name on the receipt. Yet, the prosecution failed to secure the testimony of the cashier, who personally handled the transaction. Obviously, between Atoy and Catherine, the latter's testimony is more credible since she was the one who allegedly personally interacted with petitioner Pfleider. Common sense of a prudent man would of course view the testimony of the mechanic as mere hearsay since the mechanic did not personally interact with a customer and conduct the sale. It is highly doubtful that a customer will hand money to a mechanic instead of paying directly to the cashier. *Second*, PO3 Sacris attested that petitioner Pfleider sent him to a gunsmith, Mendoza, to get the gun used to kill Granados. Again, the prosecution failed to get the testimony of Mendoza to further corroborate the accusation of PO3 Sacris. Ironically, the gunsmith Mendoza, in his Affidavit, denied that PO3 Sacris got the gun from him. The denial of Mendoza disproved the accusation of PO3 Sacris that the gun was obtained from him. *Third*, Gillamac's testimony deserves scant notice since his and Bautista's Affidavits are full of contradictions.

Since the CA heavily relied on the affidavit of both Bautista and Gillamac to reverse the findings of the RTC, a comprehensive review should have been done. Studying the affidavits filed by both Bautista and Gillamac would show that both failed to

---

[11] *Rollo*, p. 124.

corroborate the other. Also, Bautista belatedly sought to correct the blatant errors in his First Affidavit by submitting a supplemental/corrective affidavit, already his Third Affidavit, in an attempt to make it appear that his affidavits corroborate Gillamac's affidavit.

Worse, the CA did not even test the admissibility of the prosecution's evidence. For instance, the CA still put probative weight on the Affidavit of PO3 Sacris despite its clear inadmissibility due to the untimely death of PO3 Sacris. The CA likewise failed to screen the testimony of Gillamac as being hearsay, and thus inadmissible.

A superficial analysis of the aforementioned affidavits would not serve justice. Clearly, this petition falls also under the exception "*(1) when the findings are grounded entirely on speculation, surmises or conjectures*."

Evidently, this Court can fully appreciate and decide the case based on the evidence submitted because of the aforementioned exceptions. Accordingly, a remand to the RTC is unnecessary because this will entail additional expenses to both parties, as well as the judicial courts. Likewise, justice will not be served due to the delay a remand necessarily entails.

More importantly, remanding this case back to the RTC will result in a scenario where exactly the same pieces of evidence will be reevaluated at the trial court level. In doing so, a dangerous precedent resulting in the destabilization of our justice system may be triggered where the trial court evaluates issues of facts again and again, *ad infinitum*, to the detriment of the parties.

Also, there is no indication that the prosecution was denied their day in court. In fact, the contrary occurred because the prosecution was allowed to submit pieces of evidence on multiple occasions. This led to the RTC's observation stating that the prosecution submitted its evidence piecemeal resorting to multiple clarificatory or supplemental affidavits after realizing that the evidence it had previously submitted was vague, inadequate or conflicting. The submission of multiple clarificatory affidavits served only to weaken the allegations

of the prosecution since doubt as to the credibility of the witnesses arose due to the inconsistent facts submitted by them.

For instance, the prosecution submitted the First Affidavit of Bautista at the time the Information was filed with the RTC. Around four months thereafter, and sensing that the petitioner had exploited the vagueness and inconsistencies of Bautista's First Affidavit when juxtaposed with Gillamac's Affidavit, the prosecution submitted Bautista's Third Affidavit in an effort to explain the perceived contradictions.

The prosecution never complained that it was prevented from presenting any evidence that it wished to be considered by the RTC, and, therefore, cannot impute grave abuse of discretion on the part of RTC Judge Sescon for any whimsical, capricious or malicious action, since there is none.

Hence, the record of this case unquestionably contains all evidence submitted by both parties, and there are no more pieces of evidence that any party may further wish to adduce. Remanding the case back to the RTC, which already conducted a full and detailed evaluation of all the evidence, may lead to multiple, unending, or even conflicting determinations of fact.

It is also an established rule for this Court not to remand cases where it is in a position to resolve the dispute based on the records before it.[12] There are several reasons that rationalize this doctrine. In *Golangco v. Court of Appeals*,[13] this Court explained that remanding the case was not proper since, in all probability, it will only **cause further delay** as the decision would again be appealed to this Court. For the expeditious administration of justice, this Court in *Golangco* deemed it proper to resolve the issues presented before it.

In *Board of Commissioners (CID) v. De la Rosa*,[14] it was held that it is a rule for this Court to strive to settle the entire

---

[12] *Baylon v. Fact-Finding Intelligence Bureau*, G.R. No. 150870, December 11, 2002, 394 SCRA 21.

[13] G.R. No. 124724, December 22, 1997, 283 SCRA 493, 501.

[14] G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 853, 875-876.

controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. This Court explained that no useful purpose will be served if a case or the determination of an issue in a case is remanded to the trial court only to have its decision raised again to the CA, and from there back again to this Court.

In *Nicolas v. Desierto*,[15] it was similarly held that remand was not necessary because the Court was in a position to resolve the issue based on the records and evidence before it. More importantly, the Court held that the ends of speedy justice would not be served by such remand.

In *People v. Escober*,[16] this Court deemed it wise to render judgment, rather than to remand the case in order to accord the accused therein their Constitutional right for the speedy disposition of their cases.

Certainly, we can add to the aforementioned explanations and further enrich our jurisprudential principles by affirming that remanding a case is not warranted when doing so can result in multiple, unending, or contradicting determinations of factual issues.

Based on the foregoing, there is no just explanation to remand the instant petition back to the RTC.

The evidence on record submitted by the prosecution clearly failed to support a finding that probable cause exists

It is the considered view that the Court must uphold the detailed analysis made by Judge Sescon that the evidence on record is clearly insufficient to support a finding that probable cause exists.

The prosecution was fully aware and even admitted that it could not successfully establish probable cause solely based

---

[15] G.R. No. 154668, December 16, 2004, 447 SCRA 154, 164.

[16] G.R. Nos. 69564 & 69658, January 29, 1988, 157 SCRA 541.

on the extrajudicial confessions of Bautista. Thus, the prosecution saw the need to present additional evidence and submitted the affidavits of three other witnesses, namely: (1) Affidavit of PO3 Sacris; (2) Affidavit of Gillamac; and (3) Affidavit of Atoy.

First, the prosecution presented the Affidavit of PO3 Sacris who alleged that he was sent by no less than petitioner himself to claim a gun from a certain Renato Mendoza. To prevent the possibility that the gun may be inadvertently interchanged with another firearm, PO3 Sacris asserted that he copied the serial number of the gun on his PNP tickler. This gun turned out to be the same firearm that was recovered from the gunman Bautista that was used in the shooting of Granados.

Unfortunately, while this case was pending, PO3 Sacris died in an accident while he was riding on his motorcycle. Tragically and ironically, the vehicle that hit PO3 Sacris causing his untimely demise was owned by the family of the victim Granados.[17] There is no indication that petitioner had been involved in any manner with regard to the death of PO3 Sacris.

In view of Sacris' untimely demise, this Court can no longer take into account PO3 Sacris' statements in determining the existence of probable cause, for doing so would violate the Constitutional rights of the petitioner to meet the witness against him face to face.[18] The statements of PO3 Sacris can no longer have any probative value.[19] It was, therefore, a grave error on the part of the CA when it continued to consider the allegations of PO3 Sacris.

Second, the prosecution submitted the Affidavit of Gillamac who claimed that the son of petitioner hired him as a bodyguard-driver during the May 2010 elections. While serving as a bodyguard-driver, Gillamac averred that he was the one who introduced Bautista to petitioner in relation to an alleged

---

[17] Annex "X" of the Petition for Review on *Certiorari*.

[18] 1987 CONSTITUTION, Art. III, Sec. 14.

[19] *Tating v. Marcella*, G.R. No. 155208, March 27, 2007, 519 SCRA 79.

assassination plot against a certain Mayor Po. Accordingly, Gillamac said that he got to know that Bautista had a project to assassinate Granados when he accompanied Bautista to conduct a surveillance operation. Based on Gillamac's statements, Bautista confided to him the identity of the mastermind in the assassination of Granados:

Q: During your surveillance, was there anything that Ryan confided to you?
A: Ryan said his niece is sick and needs to be brought to the hospital as soon as possible so he needed money for her medication and that project is an opportunity for him to have money.

Q: Did he tell you who induced him to do the project and how much?
A: Yes, he said the project is worth Php50,000.00 and his principal is alias "Bebot Heneral.[20]

The foregoing is a classic and perfect example of what constitutes hearsay evidence. In *People v. Manhuyod, Jr.*, hearsay evidence is defined as "evidence not of what the witness knows himself but of what he has heard from others."[21] Likewise, Section 36, Rule 130 of the Rules of Court provides that a witness can testify only to those facts which he knows of his own personal knowledge. Hence, the hearsay rule bars the testimony of a witness who merely recites what someone else has told him. The rule that hearsay testimony is inadmissible in evidence is fundamental.[22]

It is indubitable that Gillamac, based on the records, had no personal knowledge as regards the identity of the principal, if any, of the assassination operation of Bautista. Gillamac's sole basis in claiming that petitioner is involved in the crime is merely the story Bautista told him. Since Gillamac has **no personal knowledge** of any information that it was petitioner who induced or ordered Bautista to kill the victim Granados, Gillamac's

---

[20] Page 2, Affidavit of Rex Maceda Gillamac dated September 16, 2010.

[21] G.R. No. 124676, May 20, 1998, 290 SCRA 257, 270.

[22] *People v. Vda. de Ramos*, 451 Phil. 214, 224 (2003).

statements are purely hearsay and inadmissible in evidence to prove the complicity of petitioner.

In *Agcaoili v. Aquino*,[23] a case involving parties that were members of the bench, this Court made a categorical ruling that hearsay evidence cannot be the basis of probable cause for the issuance of a warrant of arrest. A witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his own perception. Hearsay evidence, therefore, has no probative value whatsoever.

Interestingly, Bautista, in his First Affidavit, never even mentioned Gillamac's name as the person who went with him for the surveillance of the victim.

Third, the prosecution submitted the Affidavit of Atoy who averred that it was petitioner Pfleider who personally bought the motorcycle that Bautista used and was recovered from the crime scene. Atoy claimed that he was employed as a junkshop helper and mechanic at Maning's Enterprises. Atoy further claimed that he was the one who personally received the payment for the getaway motorcycle vehicle from petitioner Pfleider. According to Atoy, he came to personally know petitioner Pfleider after the latter allegedly bought two motorcycles on a previous occasion, and in that event a co-worker had told him that the buyer was petitioner Pfleider:

Q: How did you know General Pfleider? Are you acquainted with him?
A: Yes sir, I know General Pfleider because he had already bought from us two (2) other motorcycles he used during the May 2010 election before he purchased the said STX motorcycle he gave to Ryan Bautista. Besides, I know him (Pfleider) to be the owner / proprietor of the Duptours van for hire.

Q: How long do you know General Pfleider?
A: I have known him since he bought at our store the two (2) units of motorcycles before the May 2010 National and Local Elections.

Q: Did he actually go to your office to personally buy that two (2) units of motorcycle that he used in the elections?
A: Yes sir, he was the one who went to our store that is why I knew him.

---

[23] A.M. No. MTJ-94-979, October 25, 1995, 263 SCRA 403.

Q: Who told you the name and identity of General Pfleider?
A: Our former mechanic, Jovie Laude of Ormoc City who knows him.

Petitioner Pfleider, in his Counter-Affidavit, denied that he bought the motorcycle that was used as getaway vehicle by Bautista, or that he bought any motorcycle from Maning's Enterprises for that matter. Petitioner Pfleider also raised in his defense that he was not the buyer of the getaway motorcycle as proven by Sales Invoice No. 4401 indicating the name of Bautista as buyer.

Petitioner Pfleider further submitted an Affidavit executed by his son, Edwin "B." Pfleider. The latter admitted in his affidavit that it was he who personally bought a motorcycle from Maning's Enterprises, and not his father whose full name is Edwin "A." Pfleider. To corroborate his assertions, petitioner submitted a Sales Invoice dated November 17, 2009 and a Deed of Absolute Sale notarized on November 18, 2009, both of which indicate that the name of the person who bought a motorcycle from Maning's Enterprises is the son Edwin "B." Pfleider, and not petitioner Edwin "A." Pfleider.

Simply stated, the prosecution wishes to convince this Court that even if Sales Invoice 4401 reflects the name of Bautista, such does not negate a finding that petitioner Pfleider was the true purchaser.

On a more crucial point, however, it must not escape the keen observation of this Court that the prosecution never addressed the contention of petitioner Pfleider that it was another person who was involved in the previous motorcycle sale. This point is so crucial because Atoy claimed that it was during this very occasion that he became aware of the identity of petitioner Pfleider.

The documentary evidence on record, in the form of Sales Invoice and notarized Deed of Sale, all points to the conclusion that it was not petitioner Pfleider, but his son whose name is Edwin "B." Pfleider, who previously bought a motorcycle from Maning's Enterprises. These documents came into existence long before the crime occurred and could not have been hatched

merely to suit the self-serving interests of petitioner Pfleider. On their part, the prosecution was not able to submit any Sales Invoice, Deed of Sale, or other documentary evidence showing that petitioner made any purchases from Maning's Enterprises. The sale of a motorcycle unit is a regulated transaction and is bound to yield a document trail. The absence of any documentary evidence establishing that petitioner purchased from Maning's Enterprises can only mean that no such transaction ever took place. In fact, the prosecution never contradicted Pfleider's allegation that it was another person who was involved in the previous sales transaction referred to by Atoy.

This means that Atoy was either seriously mistaken or was not being truthful when he claimed that he came to personally know the identity of petitioner Pfleider when the latter purportedly transacted at Maning's Enterprises on a previous occasion. Atoy's statement clearly cannot support a finding of probable cause because, aside from being left uncorroborated, it points to the conclusion that he never met the petitioner. It remains uncontroverted that it was not petitioner Pfleider, but another person in the name of Edwin "B." Pfleider, who made the previous motorcycle purchase.

Probable cause, for purposes of issuance of warrant of arrest, has been defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. It is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for arresting the accused.[24] The requirement that a warrant of arrest can issue only upon the existence of probable cause is a protection against false arrest enshrined in no less than Section 2, Article III of the Constitution.

Tested against the aforementioned standard, it is clear that the pieces of evidence submitted by the prosecution, all circumstantial in nature, cannot support a finding that judicial

---

[24] *Allado v. Diokno*, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 199-200.

probable cause exists. The statements of PO3 Sacris and Gillamac are indubitably not admissible in evidence and produce no legal effect. The testimony of Atoy is left uncorroborated and suffers from serious flaws.

The prosecution also advanced the theory that the First and Third Affidavits of Bautista can be admitted, although not as direct evidence, but as corroborating evidence to show the probability of participation of a co-accused.

The proposition of the prosecution that an extrajudicial confession may be admissible as corroborative evidence of other facts is unavailing. This Court held in *People v. Vda. de Ramos*[25] that the application of the rule that an extrajudicial confession may be accepted as corroborative evidence necessarily implies that there must be other direct or circumstantial evidence. In the absence of any other evidence, then there will be nothing for the extrajudicial confession to corroborate.

In the instant case, Bautista's extrajudicial confessions cannot serve to corroborate the allegations of PO3 Sacris and Gillamac. It bears reiterating that PO3 Sacris already died and his death makes it impossible for the petitioner to confront him. On the other hand, Gillamac's allegation regarding the involvement of petitioner is hearsay in nature. Bautista's First Affidavit also cannot serve to corroborate Atoy's statements simply because it never made any reference to Atoy.

Bautista's allegations in his Third Affidavit are too speculative and the manner in which his affidavits were executed was replete with serious irregularities. *First*, Bautista's Third Affidavit, which constitutes a confession, was executed without the assistance of counsel in violation of the Constitutional guarantee against uncounselled confessions. *Second*, Bautista was not informed of his right to have a competent and independent counsel of his own choice in executing his Third Affidavit. *Third*, Bautista's Third Affidavit was executed in English, a language that Bautista does not understand. *Fourth*, Bautista entered a

---

[25] *Supra* note 22, at 225.

plea of not guilty during his arraignment. As a legal consequence, the prosecution is now required to independently prove all elements of the crime charged and the prosecution can no longer rely on Bautista's extrajudicial confessions. *Fifth*, Bautista executed three different affidavits, a fact that adversely affects his credibility and the voluntariness of his confessions.

Then, the extrajudicial statements of Bautista consist of incredulous accounts. According to Bautista, a certain "Bebe" and "Kokie" invited him to go with them. Bautista agreed to go despite barely knowing "Bebe" and "Kokie," and despite not knowing where the group planned to go. Strangely, the group allegedly ended up meeting with petitioner, where Bautista was introduced as a barber. Months later, petitioner purportedly contacted Bautista and all of a sudden gave the assassination instruction. The narration is highly improbable, contrary to human experience, or even ridiculous.

Also, Bautista claimed that it was Pfleider himself who accompanied him during a surveillance to identify the target victim. This statement of Bautista contradicts Gillamac's version wherein Gillamac claimed that he was the one who accompanied Bautista during the latter's surveillance of the victim. Bautista likewise claimed that it was "Kokie" who introduced him to Pfleider. This is clearly contrary to the allegations of Gillamac claiming that he was the one who introduced Bautista to Pfleider. Notably, nowhere in Bautista's First Affidavit did he even mention Gillamac's name.

Notably, Bautista attempted to salvage the foregoing inconsistencies in his Third Affidavit when he explained that more than one surveillance operation was made. Pfleider allegedly accompanied Bautista in one surveillance operation, while it was Gillamac who went with Bautista in another surveillance. Bautista also claimed that "Bebe" and Gillamac is actually one and the same person.

The subsequent addition of completely new stories in Bautista's Third Affidavit seriously undermines his spontaneity and truthfulness with respect to the new allegations. It is more than likely that the new stories in Bautista's Third Affidavit

were merely fabricated to "fix" fatal drawbacks the prosecution's theory had suffered after the contradictions were exploited. These drawbacks, coupled with the fact that the execution of Bautista's Third Affidavit transgressed multiple Constitutional safeguards, lead to a conclusion that the prosecution's evidence clearly fails to satisfy the required probable cause threshold.

Finally and importantly, we should note that on January 21, 2013, Asst. State Prosecutor Gingoyon filed with Branch 8 of the RTC, Tacloban City, an Amended Information against Bautista which incorporated an accusatory portion that alleges the presence of conspiracy in the murder of Granados. Most interestingly, when Bautista was arraigned on January 25, 2013 pursuant to the newly Amended Information and assisted by his counsel, Atty. Gaspay, Bautista pleaded "Not Guilty." This filing of an Amended Information against Bautista seems to be a desperate attempt to tag petitioner Pfleider as the mastermind behind the murder of Granados. In reviewing the records of this case, the Amended Information took more than two (2) years for the prosecution to amend Bautista's Information solely causing the murder of Granados to conspiring with other persons to commit the crime. Most remarkably, the Amended Information intentionally left Pfleider's name unmentioned, again We quote: "*another person whose true name, identity and whereabouts are still unknown*."

This Amended Information is a patent violation of Section 2, Rule 110 of the Rules on Criminal Procedure which states: "*The complaint or information shall be in writing, in the name of the People of the Philippines against all persons who appear to be responsible for the offense involved*." Likewise, Section 6 of the same rule also provides that: "*When an offense is committed by more than one person, all of them shall be included in the complaint or information*."

Thus, despite the prosecution's tenacious advocacy of implicating Pfleider as the mastermind of the crime, it is quite obvious that the prosecution was never sure about Bautista's alleged co-conspirator. This dislocates their charge against Pfleider of ordering the murder of Granados.

Finally, Baustista's plea of "NOT GUILTY" to the charge found in the Amended Information shows that he was fully aware that the State was charging him for conspiring with another person in the murder of Manuel. By denying his guilt to the charge in he Amended Information, he effectively withdrew and denounded the extrajudicial confession in his First Affidavit wherein he confessed to committing the crime against Granados. This most recent plea of Bautista only underlines the unreliability and unworthiness of his allegations in the eyes of the law and effectively diminishes his credibility as a witness.

Therefore, the evidence on record submitted by the prosecution clearly failed to support a finding that probable cause exists to charge petitioner for murder.

Accordingly, I vote to GRANT the instant petition.

THIRD DIVISION

[G.R. No. 208359. June 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DEMETRIO SABIDA *y* SADIWA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; HAVING ADMITTED THE KILLING, THE ACCUSED IS REQUIRED TO RELY ON THE STRENGTH OF HIS OWN EVIDENCE, NOT ON THE WEAKNESS OF THE PROSECUTION'S EVIDENCE, WHICH EVEN IF IT WERE WEAK, COULD NOT BE DISBELIEVED IN VIEW OF HIS ADMISSION; ACCUSED SELF-SERVING CLAIM OF SELF-DEFENSE COUPLED WITH THE ABSENCE OF ANY INJURY FROM HIS SUPPOSED ATTACKER

FAILS TO SUPPORT ANY CLAIM OF UNLAWFUL AGGRESSION.— In attempting to escape liability, Sabida invokes self-defense. Upon invoking the justifying circumstance of self-defense, Sabida assumed the burden of proving the justification of his act with clear and convincing evidence. Having admitted the killing, Sabida is required to rely on the strength of his own evidence, not on the weakness of the prosecution's evidence, which even if it were weak, could not be disbelieved in view of his admission. However, based on the records and the evidence adduced by both parties, it is indisputable that Sabida failed to show that Mawac exhibited unlawful aggression against him. Being the party initiating the attack and armed with a deadly weapon, Sabida cannot successfully claim that there was unlawful aggression. Sabida's self-serving claim of self-defense coupled with the fact that he did not sustain any injury from his supposed attacker fails to support any claim of unlawful aggression. The trial court aptly noted that there was no clear and credible evidence that Mawac was the one who instigated the fight and that Sabida was merely fending off an attack. Clearly, the trial court did not err in giving credence to the testimony of Pimentel, since he saw the entire event transpire before him, from Sabida's emergence from the road until his attack on the victim, since he was alongside the victim when the incident occurred. Pimentel's testimony is even bolstered by the fact that he immediately reported what he witnessed and revealed the identity of the assailant to the authorities. Moreso, Pimentel has not been shown to have been inspired by any ill-motive to incriminate and testify against Sabida.

2. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; PRESENT WHERE THE SUDDEN AND UNEXPECTED ATTACK ADOPTED BY THE ACCUSED DEPRIVED THE VICTIM OF ANY CHANCE TO DEFEND HIMSELF OR TO RETALIATE.—** The qualifying aggravating circumstance of treachery was correctly appreciated by the CA. In this case, treachery is evident from the fact that the victim could not have been aware of the imminent peril to his life. Mawac was obviously caught off-guard, unprepared for the sudden, unexpected and unprovoked attack on his person when Sabida surprisingly emerged from the road and hacked him with a bolo. The sudden and unexpected attack adopted by Sabida deprived the victim of any chance to defend himself or to retaliate. He had no foreboding of any danger, threat or harm upon his life at the

said time, place and occasion. There was treachery not only because of the suddenness of the attack but also because of the absence of an opportunity on the victim's part to repel the attack. Without a doubt, the killing was attended by treachery. Thus, considering all the above-mentioned facts, Sabida's conviction for the crime of murder must stand.

3. ID.; ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Following the new jurisprudential ruling in *People v. Jugueta*, where the penalty for the crime committed is death which, however, cannot be imposed, we increase the amounts of indemnity and damages to be imposed as follows: PhP100,000 as civil indemnity; PhP100,000 as moral damages; and PhP100,000 as exemplary damages. The Court likewise affirms the actual damages of PhP30,000 awarded by the RTC as it was expressly provided on record that the heirs of the victim actually incurred such expense for the wake and burial of the victim evidenced by the corresponding receipts. Lastly, interest at the rate of 6% per annum is imposed on all damages awarded reckoned from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

For review before this Court is an appeal seeking to reverse and set aside the Decision[1] dated October 29, 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04813, which affirmed the Decision[2] dated August 24, 2010 of the Regional Trial Court

---

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon concurring; *rollo*, pp. 2-13.

[2] Penned by Judge Recto A. Calabocal; *Id*. at 17-26.

(RTC), Branch 42, of Pinamalayan, Oriental Mindoro, in Crim. Case No. P-7824 finding the accused-appellant Demetrio Sabida *y* Sadiwa guilty of the crime of Murder.

The Facts

Based on the prosecution's evidence, it was established that on July 7, 2009, at 6:30 a.m., Richard Pimentel (Pimentel) and the victim, MacArthur Mawac (Mawac), were walking towards the mountain since Pimentel planned to clean his banana plantation while Mawac was on his way to work as a guard on duty at the Transco Tower located at the foot of the mountain in Barangay Calingag.[3]

While Mawac and Pimentel were walking, Sabida unexpectedly emerged from the road and repeatedly stabbed and hacked Mawac with a bolo. Afterwards, Sabida turned to Pimentel and uttered, "*Isa ka pa*," prompting the latter to run away. Sabida run after Pimentel but he failed to catch the latter. Immediately thereafter, Pimentel reported the incident to Barangay Captain Hintay, who in turn reported the incident to the police station of Pinamalayan.[4]

At around 8:00 a.m. of the same day, PO3 Thaddeus Ferancullo (PO3 Ferancullo) and Investigator. Ruelito Magtibay (Investigator Magtibay) proceeded to the crime scene and found the dead body of Mawac on the side of the road, covered with blood, and had several stab wounds at different parts of his body.[5]

Subsequently, PO3 Ferancullo and Investigator Magtibay, accompanied by Pimentel, went to Barangay Malaya since it was the last direction where Sabida was seen when he ran off. At around 3:00 p.m., the police officers received a call from Barangay Captain Hintay and was informed that Sabida was seen hiding in an abandoned house. Thereafter, the police officers,

---

[3] *Id*. at 3.

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

[5] *Id*. at 4.

alongside Pimentel, went to the abandoned house and found Sabida wearing a sheet of tin under his shirt with a bolo. The police officers then arrested Sabida, confiscated the bolo and apprised him of his rights.[6]

For his part, Sabida admitted killing Mawac and invoked self-defense. He said that he had a misunderstanding with Mawac and the latter's wife because the couple accused his domestic animals of destroying their *palay*. He alleged that the couple retaliated by poisoning and stealing his chickens and other farm animals on different occasions. He further narrated that on July 7, 2009, while he was working in his vegetable garden, he saw Pimentel and Mawac walking by. He then heard Pimentel warning Mawac to be careful as he was nearby to which Mawac allegedly responded, "*Sige, unahan mo na*. " This prompted him to confront the two and ask why Mawac was intending to kill him when what he merely wanted to know is where his chicken went. He said that Mawac tried to draw out the bolo tucked under his waist but Sabida was able to defend himself so they struggled and fought off each other. Meanwhile, Pimentel fled the scene while they were fighting. He said that he left Mawac lying on the ground, who, even then, was still taunting him to continue fighting.[7]

Sabida further said that he sought the help of his aunt Soledad but he was not able to go to her house so he just stayed and rested at an unnamed woman's house. Then he moved to an uninhabited nipa hut and rested there. After an hour, Barangay Captain Hintay arrived, together with armed men, and he surrendered to them.[8]

After trial, the RTC rendered judgment convicting Sabida of the crime of murder qualified by treachery and sentenced him to suffer the penalty of *reclusion perpetua*, without the possibility of parole. He was ordered to indemnify the heirs of

---

[6] *Id*. at 4.

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

[8] *Id*. at 5.

the victim with PhP30,000 as actual damages, PhP50,000 as civil indemnity; and PhP50,000 as moral damages.

Sabida filed a Motion for Reconsideration but it was also denied. Thereafter, he filed a Notice of Appeal[9] before the CA.

Upon review, the CA dismissed the appeal and affirmed the conviction of Sabida, hence, he appealed his conviction to this Court.[10]

The Issue Presented

WHETHER THE GUILT OF SABIDA FOR THE CRIME OF MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

The Court's Rulings

The appeal lacks merit.

In attempting to escape liability, Sabida invokes self-defense. Upon invoking the justifying circumstance of self-defense, Sabida assumed the burden of proving the justification of his act with clear and convincing evidence. Having admitted the killing, Sabida is required to rely on the strength of his own evidence, not on the weakness of the prosecution's evidence, which even if it were weak, could not be disbelieved in view of his admission.[11]

However, based on the records and the evidence adduced by both parties, it is indisputable that Sabida failed to show that Mawac exhibited unlawful aggression against him. Being the party initiating the attack and armed with a deadly weapon, Sabida cannot successfully claim that there was unlawful aggression. Sabida's self-serving claim of self-defense coupled with the fact that he did not sustain any injury from his supposed attacker fails to support any claim of unlawful aggression. The trial court aptly noted that there was no clear and credible

---

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

[10] *Id*. at 13-14.

[11] *People v. Benjamin Casas y Vintulan*, G.R. No. 212565, February 25, 2015.

evidence that Mawac was the one who instigated the fight and that Sabida was merely fending off an attack.

Clearly, the trial court did not err in giving credence to the testimony of Pimentel, since he saw the entire event transpire before him, from Sabida's emergence from the road until his attack on the victim, since he was alongside the victim when the incident occurred. Pimentel's testimony is even bolstered by the fact that he immediately reported what he witnessed and revealed the identity of the assailant to the authorities. Moreso, Pimentel has not been shown to have been inspired by any ill-motive to incriminate and testify against Sabida.

The qualifying aggravating circumstance of treachery was correctly appreciated by the CA. In this case, treachery is evident from the fact that the victim could not have been aware of the imminent peril to his life. Mawac was obviously caught off-guard, unprepared for the sudden, unexpected and unprovoked attack on his person when Sabida surprisingly emerged from the road and hacked him with a bolo. The sudden and unexpected attack adopted by Sabida deprived the victim of any chance to defend himself or to retaliate. He had no foreboding of any danger, threat or harm upon his life at the said time, place and occasion. There was treachery not only because of the suddenness of the attack but also because of the absence of an opportunity on the victim's part to repel the attack. Without a doubt, the killing was attended by treachery.

Thus, considering all the above-mentioned facts, Sabida's conviction for the crime of murder must stand.

Following the new jurisprudential ruling in *People v. Jugueta*,[12] where the penalty for the crime committed is death which, however, cannot be imposed, we increase the amounts of indemnity and damages to be imposed as follows: PhP100,000 as civil indemnity; PhP100,000 as moral damages; and PhP100,000 as exemplary damages. The Court likewise affirms the actual damages of PhP30,000 awarded by the RTC as it was

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

expressly provided on record that the heirs of the victim actually incurred such expense for the wake and burial of the victim evidenced by the corresponding receipts.[13] Lastly, interest at the rate of 6% per annum is imposed on all damages awarded reckoned from the date of the finality of this judgment until fully paid.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04813 dated October 29, 2012 Decision which found accused-appellant Demetrio Sabida y Sadiwa **GUILTY** in Criminal Case No. P-7824 for the crime of Murder, is **AFFIRMED**, with **MODIFICATION** increasing the amounts of indemnity and damages to be imposed as follows: PhP100,000 as civil indemnity; PhP100,000 as moral damages; and, PhP100,000 as exemplary damages. All damages awarded shall earn interest at the rate of 6% per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 209518. June 19, 2017]

MA. HAZELINA A. TUJAN-MILITANTE, *petitioner, vs.* **ANA KARI CARMENCITA NUSTAD, as represented by ATTY. MARGUERITE THERESE L. LUCILA,** *respondent*.

---

[13] *Id.* at 15.

[*] Designated as additional member as per Raffle dated March 15, 2017.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; A TRIAL COURT ACQUIRES JURISDICTION OVER THE PERSON OF THE DEFENDANT BY SERVICE OF SUMMONS BUT EVEN WITHOUT VALID SERVICE OF SUMMONS, A COURT MAY STILL ACQUIRE JURISDICTION OVER THE PERSON OF THE DEFENDANT, IF THE LATTER VOLUNTARILY APPEARS BEFORE IT.— A trial court acquires jurisdiction over the person of the defendant by service of summons. However, it is equally significant that even without valid service of summons, a court may still acquire jurisdiction over the person of the defendant, if the latter voluntarily appears before it. x x x. By seeking affirmative reliefs from the trial court, the individual [petitioner is] deemed to have voluntarily submitted to the jurisdiction of the court. A party cannot invoke the jurisdiction of the court to secure the affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.

2. ID.; ID.; ID.; ID.; FILING OF A MOTION FOR RECONSIDERATION WHICH SOUGHT FOR AFFIRMATIVE RELIEF IS TANTAMOUNT TO VOLUNTARY APPEARANCE AND SUBMISSION TO THE AUTHORITY OF THE COURT *A QUO*.— [W]hile Tujan-Militante's motion to dismiss challenged the jurisdiction of the court *a quo* on the ground of improper service of summons, the subsequent filing of a Motion for Reconsideration which sought for affirmative relief is tantamount to voluntary appearance and submission to the authority of such court. Such affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the [court]'s jurisdiction.

3. ID.; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF OFFICIAL RECORDS; THE REQUIRED CERTIFICATION OF AN OFFICER IN THE FOREIGN SERVICE REFERS ONLY TO WRITTEN OFFICIAL ACTS OR RECORDS OF THE OFFICIAL ACTS OF THE SOVEREIGN AUTHORITY, OFFICIAL BODIES AND TRIBUNALS, AND PUBLIC OFFICERS OF

THE PHILIPPINES, OR OF A FOREIGN COUNTRY, BUT DOES NOT INCLUDE DOCUMENTS ACKNOWLEDGED BEFORE A NOTARY PUBLIC ABROAD.— In the *Heirs of Spouses Arcilla v. Teodoro*, this Court clarified that the ruling in the *Lopez* case is inapplicable because the Rules of Evidence which were then effective were the old Rules, prior to their amendment in 1989. When the Rules of Evidence were amended in 1989, the introductory phrase "*An official record or an entry therein*" was substituted by the phrase "*The record of public documents referred to in paragraph (a) of Section 19*", as found in the present Rules. Also, Section 25 of the former Rules became Section 24 of the present Rules. On this note, the case of *Heirs of Spouses Arcilla* explained further: It cannot be overemphasized that the **required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19 (a)**, to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines, or of a foreign country. The Court agrees with the CA that **had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.** As the Rules explicitly provide that the required certification of an officer in the foreign service refers only to written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines, or of a foreign country, as found in Section 19(a), Rule 132, such enumeration does not include documents acknowledged before a notary public abroad.

4. ID.; ID.; ID.; A NOTARIZED DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY, AND TO OVERCOME THE SAME, THERE MUST BE EVIDENCE THAT IS CLEAR, CONVINCING AND MORE THAN MERELY PREPONDERANT; OTHERWISE, THE DOCUMENT SHOULD BE UPHELD.— We rule on the validity of the subject notarial document. What is important is that [Nustad] certified before a commissioned officer clothed with powers to administer an oath that she is authorizing Atty. Lucila to institute the petition before the court *a quo* on her behalf. A notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence

that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld.

5. CIVIL LAW; LAND REGISTRATION; THE ISSUE AS TO WHETHER AN ALIEN IS OR IS NOT QUALIFIED TO ACQUIRE THE LANDS COVERED BY THE SUBJECT TITLES CAN ONLY BE RAISED IN AN ACTION EXPRESSLY INSTITUTED FOR THAT PURPOSE. — Tujan-Militante's contention that the TCTs under the name of Nustad are invalid because of her citizenship constitutes a collateral attack on the titles. The CA correctly ruled that the issue as to whether an alien is or is not qualified to acquire the lands covered by the subject titles can only be raised in an action expressly instituted for that purpose.

APPEARANCES OF COUNSEL

Milintate and Associates for petitioner.
Caguioa & Gatmaytan for respondent.

D E C I S I O N

TIJAM, *J.*:

Petitioner Ma. Hazelina A. Tujan-Militante seeks to set aside and reverse the: (1) Decision[1] dated February 27, 2013, which dismissed petitioner's Petition for Certiorari under Rule 65; and (2) Resolution[2] dated October 2, 2013, which denied petitioner's Motion for Reconsideration of the Court of Appeals[3] (CA) in CA-G.R. SP No. 124811.

The Facts

On June 2, 2011, Respondent Ana Kari Carmencita Nustad (Nustad), as represented by Atty. Marguerite Therese Lucila

---

[1] *Rollo*, pp. 43-49.

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

[3] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon.

(Atty. Lucila), filed a petition before the Regional Trial Court, Branch 55, Lucena City (RTC) and prayed that Ma. Hazelina A. Tujan-Militante (Tujan-Militante) be ordered to surrender to the Register of Deeds of Lucena City the owner's duplicate copy of the Transfer Certificate of Title Nos. T-435798, T-436799, T-387158 and T-387159, which were all issued in Nustad's name. She averred that Tujan-Militante has been withholding the said titles.

In its Order dated July 26, 2011, the RTC set the petition for a hearing.[4]

Instead of filing an Answer, Tujan-Militante filed an Omnibus Motion to Dismiss and Annul Proceedings[5] dated September 2, 2011. She averred that the RTC did not acquire jurisdiction over her person as she was not able to receive summons. Moreover, she argued that the Order appeared to be a decision on the merits, as it already ruled with certainty that she is in possession of the subject titles.

The Ruling of the RTC

In an Order dated November 23, 2011, the RTC[6] denied Tujan-Militante's Motion and ruled that it has jurisdiction over the case. Further the RTC stated that it has not yet decided on the merits of the case when it ordered Tujan-Militante to surrender TCT Nos. T-435798, T-436799, T-387158 and T-387159 because it merely set the petition for a hearing.

Tujan-Militante filed a Motion for Reconsideration[7] and alleged that the Power of Attorney executed by Nustad in favor of Atty. Lucila is void and non-existent. Tujan-Militante likewise averred that Atty. Lucila is representing a Norwegian, who is not allowed to own lands in the Philippines. Aside from the dismissal of the case, petitioner prayed that the Office of the

---

[4] *Rollo*, pp. 50-51.

[5] *Id*. at 52-60.

[6] Promulgated by Judge Bienvenido A. Mapaye.

[7] *Id*. at 63-77.

Solicitor General and the Land Registration Authority be impleaded. Moreover, Tujan-Militante prayed for moral and exemplary damages, attorney's fees, and costs of suit.

In an Order[8] dated February 27, 2012, the court *a quo* denied Tujan-Militante's Motion for Reconsideration.

Aggrieved, Tujan-Militante filed a Petition for Certiorari before the CA.

The Ruling of the CA

In a Decision[9] dated February 27, 2013, the CA recognized the jurisdictional defect over the person of Tujan-Militante, but nevertheless ruled that the flaw was cured by Tujan-Militante's filing of her Motion for Reconsideration. Such Motion sought for affirmative reliefs, which is considered as voluntary submission to the jurisdiction of the court.

Tujan-Militante filed a Motion for Reconsideration, which was denied by the CA in a Resolution[10] dated October 2, 2013.

Hence, this appeal.

The Court's Ruling

The appeal is bereft of merit.

A trial court acquires jurisdiction over the person of the defendant by service of summons. However, it is equally significant that even without valid service of summons, a court may still acquire jurisdiction over the person of the defendant, if the latter voluntarily appears before it.[11] Section 20, Rule 14 of the Rules of Court provides:

> Section 20. *Voluntary Appearance*. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds of relief aside

---

[8] *Id*. at 112-114.

[9] *Supra* note 1.

[10] *Rollo*, pp. 41-42.

[11] *Wong v. Factor-Koyama*, G.R. No. 183802, September 17, 2009.

from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

By seeking affirmative reliefs from the trial court, the individual [petitioner is] deemed to have voluntarily submitted to the jurisdiction of the court. A party cannot invoke the jurisdiction of the court to secure the affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.[12]

In this case, while Tujan-Militante's motion to dismiss challenged the jurisdiction of the court *a quo* on the ground of improper service of summons, the subsequent filing of a Motion for Reconsideration which sought for affirmative relief is tantamount to voluntary appearance and submission to the authority of such court. Such affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the [court]'s jurisdiction.[13]

As to the claim of Tujan-Militante that the requirements laid down in Sec. 24, Rule 132[14] of the Rules of Court apply with respect to the power of attorney notarized abroad, she cited the ruling in *Lopez v. Court of Appeals.*[15] In said case, this Court

---

[12] *Nation Petroleum Gas, Inc. v. Rizal Commercial Banking Corp.*, G.R No. 183370, August 17, 2015.

[13] *Reicon Realty Corp. v. Diamond Dragon Realty and Management, Inc.*, G.R. No. 204796, February 4, 2015.

[14] Section 24. Proof of official records. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by the secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[15] G.R. No. 77008, December 29, 1987, 156 SCRA 838.

held that the power of attorney must comply with the requirements set forth under Sec. 25 (*now* Sec. 24), Rule 132 of the Rules of Court in order to be considered as valid.

Section 24 of Rule 132 provides that:

Section 24. *Proof of official record*.— **The record of public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (emphasis supplied)

Section 19 of Rule 132 states that:

Section 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 be entered therein.

All other writings are private. (emphasis supplied)

In the *Heirs of Spouses Arcilla v. Teodoro,*[16] this Court clarified that the ruling in the *Lopez* case is inapplicable because the Rules of Evidence which were then effective were the old Rules, prior to their amendment in 1989. When the Rules of Evidence were amended in 1989, the introductory phrase "*An official record or an entry therein*" was substituted by the phrase "*The*

[16] G.R. No. 162886, August 11, 2008.

record of public documents referred to in paragraph (a) of Section 19,"[17] as found in the present Rules. Also, Section 25 of the former Rules became Section 24 of the present Rules.

On this note, the case of *Heirs of Spouses Arcilla* explained further:

> It cannot be overemphasized that the **required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19 (a)**, to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines, or of a foreign country. The Court agrees with the CA that **had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.**[18] (emphasis supplied)

As the Rules explicitly provide that the required certification of an officer in the foreign service refers only to written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines, or of a foreign country, as found in Section 19(a), Rule 132, such enumeration does not include documents acknowledged before a notary public abroad.

With all these, We rule on the validity of the subject notarial document. What is important is that [Nustad] certified before a commissioned officer clothed with powers to administer an oath that she is authorizing Atty. Lucila to institute the petition before the court *a quo* on her behalf.[19]

A notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld.[20]

---

[17] *Ibid.*

[18] *Heirs of Spouses Arcilla v. Teodoro*, *Ibid*.

[19] *Heirs of Spouses Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008.

[20] *Abalos v. Heirs of Torio*, G.R. No. 175444, December 14, 2011.

Lastly, Tujan-Militante's contention that the TCTs under the name of Nustad are invalid because of her citizenship constitutes a collateral attack on the titles. The CA correctly ruled that the issue as to whether an alien is or is not qualified to acquire the lands covered by the subject titles can only be raised in an action expressly instituted for that purpose.[21]

WHEREFORE, the instant appeal is **DENIED**. Accordingly, the Decision dated February 27, 2013 and Resolution dated October 2, 2013, of the Court of Appeals in CA-G.R. SP No. 124811 are **AFFIRMED *in toto***.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 218572. June 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BILLIE GHER TUBALLAS *y* FAUSTINO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— Under [Article 266-A of the RPC], the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.

---

[21] *Director of Lands vs. Gan Tan*, G.R. No. L-2664, May 30, 1951.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; GUIDELINES IN THE REVIEW OF RAPE CASES.— In reviewing rape cases, this Court is guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; 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.— As a result of [the] guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof. 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.

4. **ID.; ID.; ID.; WHEN THERE IS NO EVIDENCE TO SHOW ANY IMPROPER MOTIVE ON THE PART OF THE COMPLAINANT TO TESTIFY AGAINST THE ACCUSED OR TO FALSELY IMPLICATE HIM IN THE COMMISSION OF THE CRIME, THE LOGICAL CONCLUSION IS THAT THE TESTIMONY IS WORTHY OF FULL FAITH AND CREDENCE.—** The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. Especially so, in this case, where accused-appellant failed to impute any ill-motive on the part of AAA to have impelled the latter to file a case of rape against him. When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence.

5. **ID.; ID.; ID.; 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.—** AAA's x x x testimony sufficiently established that ZZZ and another man, later identified by Mary as Florencio, had carnal knowledge with her. In this case, AAA was clearly in an inebriated condition when ZZZ and Florencio raped her, since AAA consumed five shots of hard liquor which she was not used to. 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.

6. **ID.; ID.; CONSPIRACY; TO ESTABLISH THE EXISTENCE OF CONSPIRACY, DIRECT PROOF IS NOT ESSENTIAL, AS CONSPIRACY MAY BE INFERRED FROM THE ACTS OF THE ACCUSED BEFORE, DURING AND AFTER THE COMMISSION OF THE CRIME WHICH INDUBITABLY POINT TO AND ARE INDICATIVE OF A JOINT PURPOSE, CONCERT OF ACTION AND COMMUNITY OF INTEREST.—** To hold an accused guilty as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. To establish the existence of conspiracy, direct proof is not essential. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. x x x. With the finding that conspiracy exists between ZZZ, Florencio and accused-appellant, the latter is liable as a co-principal to the two counts of rape.

7. **ID.; ID.; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONY OF THE WITNESS WITH REGARD TO MINOR OR COLLATERAL MATTERS DO NOT DIMINISH THE VALUE OF THE TESTIMONY IN TERMS OF TRUTHFULNESS OR WEIGHT, THUS, A FEW INCONSISTENT REMARKS IN RAPE CASES WILL NOT NECESSARILY IMPAIR THE TESTIMONY OF THE OFFENDED PARTY.—** Accused-appellant alleged that AAA's testimony was inconsistent with the testimonies of Mary and Arjay, such that AAA simply stated that as soon as she was taken to the room, she immediately slept and was only

awakened when she felt ZZZ touching her, while Mary and Arjay both testified that AAA was taken to the room, twice. We find the same immaterial to the charge of rape. Inaccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is often times not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget. Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.

8. **ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSES WHICH 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 accused-appellant was inside the room recording the dastardly act of ZZZ and Florencio, and the testimony of Arjay that accused-appellant threatened to kill him, deserve greater evidentiary weight than accused-appellant's uncorroborated defenses.

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 Billie Gher Tuballas *y* Faustino appeals the June 16, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05589 which affirmed with modification the May 4, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 172 of Valenzuela City in Crim. Case Nos. 810-V-09 and 810A-V-09 finding accused-appellant Billie Gher Tuballas *y* Faustino guilty beyond reasonable doubt for two counts of rape under paragraph 1 of Article 266-A of the Revised Penal Code (RPC).

Accused-appellant was charged with two counts of rape under separate Informations, the accusatory portions of which read:

Crim. Case No. 810-V-09

On or about November 12, 2009, in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the accused BRYAN T. FLORENCIO, conspiring together with the accused BILLIE GHER F. TUBALLAS and ZZZ,[3] seventeen (17) years old, acting with discernment, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA,[4] fifteen (15) years old, against her will

---

[1] Penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy, *rollo*, pp. 2-19.

[2] CA *rollo*, pp. 11-22.

[3] The accused's name is withheld, he being a minor at the time of the commission of the crime, consistent with A.M. No. 02-1-18-SC dated November 24, 2009 (*The Rule on Juveniles in Conflict with the Law*) and Republic Act No. 9344 (*Juvenile Justice and Welfare Act of 2006*) on confidentiality of proceedings and records.

[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.*"

and without her consent as she was deprived of reason, thereby subjecting said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[5]

CRIM. CASE No. 810A-V-09

On or about November 12, 2009, in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the accused ZZZ, seventeen (17) years old, acting with discernment, conspiring together with the accused BILLIE GHER F. TUBALLAS and BRYAN T. FLORENCIO, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, fifteen (15) years old, against her will and without her consent as she was deprived of reason, thereby subjecting said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[6]

The case against Bryan T. Florencio (Florencio) was dismissed on October 27, 2010 due to his death on October 15, 2010,[7] while ZZZ had not yet submitted himself to the jurisdiction of the court. Records show that before the filing of the case, ZZZ's custody was turned over by the City Social Welfare and Development Office of Valenzuela to ZZZ's mother. Notices were sent to ZZZ's mother to appear and bring her son to court but the return showed that they were no longer residing at their given address. Warrants of arrest were issued against ZZZ and his mother, but they still remain at large.[8]

On arraignment, accused-appellant pleaded not guilty to the two charges.[9]

The pertinent facts of the case, as summarized by the CA, are as follows:

---

[5] *Rollo*, p. 4.

[6] *Id.*, pp. 4-5.

[7] CA *rollo*, p. 12.

[8] *Id.*

[9] Records, pp. 45 and 50.

AAA testified that in the morning of 12 November 2009, she and Arjay were invited by accused ZZZ and accused-appellant to have a drink in the house of the latter. Joining them were accused Bryan, Salvador Sanidad, a certain Renerio, as well as her friend Mary. AAA got drunk and when she became dizzy she was taken by Arjay and ZZZ to a room where she was told to sleep it off. She awakened when she felt somebody touching her breast and saw that it was ZZZ. ZZZ was inside her in a pumping movement. She tried to move but somebody was pinning her hand down. She saw Bryan standing beside the sofa bed and accused- appellant taking a video of her and ZZZ with his mobile phone. When they noticed that she was awake, ZZZ stopped what he was doing and stood up. He was replaced by another man whom AAA did not know. He too had carnal knowledge with her. Sometime around 1:00 o'clock p.m. Mary awakened her and helped her fix herself with Arjay following to take her home. The next day, she told her teacher what happened and her parents were called to a meeting in the school and were apprised thereof. Afterwards, AAA and her parents proceeded to the police station and to the Crime Laboratory.

AAA's testimony was substantially corroborated by her friend Mary and Arjay.

P/Insp. Cordero testified that he conducted a physical examination that included examining the genital and extragenital areas on (sic) AAA on 13 November 2009. He noticed, among others, lacerations in her genitalia which could have been caused by a blunt object or force or trauma that was inserted in the area like an erect penis.

After the prosecution rested its case, the defense presented accused-appellant.

The accused-appellant denied raping AAA and taking a video of her while she was being raped. He admitted, however, the occurrence of a drinking session in his house wherein ZZZ, AAA, Arjay, Mary, Salvador, Reneiro, Bryan and himself were all present. He narrated that when AAA became drunk she kissed ZZZ, Bryan, and Arjay. Accused-appellant told ZZZ not to give AAA another drink because she was already drunk and flirting. Arjay also tried to stop AAA from drinking but did not (sic). After awhile AAA lay down on the sofa. Arjay and ZZZ brought AAA to a room and left her there alone. Arjay and ZZZ went outside while accused-appellant stayed in the living room and continued to drink. While accused-appellant was cleaning up, he heard a commotion. He saw Arjay and Salvador

exchanging blow. Accused-appellant pacified the two and told them to sit in the living room. At 2:00 o'clock p.m., AAA left the room where she was taken and thirty (30) minutes later everybody left his house.[10]

On May 4, 2012, the RTC rendered a Decision[11] finding accused-appellant guilty beyond reasonable doubt for two counts of rape, to wit:

WHEREFORE, in view of the foregoing, the court finds accused Billie Gher Tuballas y Faustino guilty beyond reasonable doubt as principal of the two (2) counts of rape charged against him and he is hereby sentenced to suffer the following penalties:

1. In Crim. Case No. 810-V-09, the accused is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay AAA civil liability in the amount of ₱75,000.00; ₱75,000.00 for moral damages and ₱30,000.00 exemplary damages and to pay the cost.

2. In Crim. Case No. 810A-V-09, the accused is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay AAA civil liability in the amount of ₱75,000.00; ₱75,000.00 for moral damages and ₱30,000.00 exemplary damages and to pay the cost.

Considering that accused Billie Gher Tuballas y Faustino has undergone preventive imprisonment, he shall be credited in the services of his sentence with the full time spent in detention subject to the conditions provided for by law.

This decision is not applicable to child in conflict with the law (sic) ZZZ who up to this date has not yet submitted to the jurisdiction of this court.

Let an alias warrant of arrest be issued against accused ZZZ.

SO ORDERED.[12]

Hence, this appeal with accused-appellant raising this lone assignment of error:

---

[10] *Rollo*, pp. 6-7.

[11] *Supra*, note 2.

[12] CA *rollo*, p. 22.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[13]

Accused-appellant claimed that the intoxicated state of AAA, the victim, Arjay and Mary, casts doubt on the veracity and accuracy of their statements. He further claimed that the RTC erred in finding that a conspiracy existed between accused-appellant, ZZZ and Florencio.

The appeal lacks merit.

Article 266-A of the 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

Under the said provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.

In reviewing rape cases, this Court is guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized

[13] CA *rollo*, p. 41.

with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.[14]

As a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.[15]

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.

---

[14] *People v. SPO1 Arnulfo A. Aure and SPO1 Marlon H. Ferol,* G.R. No. 180451, October 17, 2008.

[15] *Id*.

The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[16] Especially so, in this case, where accused-appellant failed to impute any ill-motive on the part of AAA to have impelled the latter to file a case of rape against him. When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence.[17]

We have carefully examined the testimony of AAA and found the same to be credible, spontaneous, straightforward and trustworthy, to wit:

MS. CAPONES
Q. AAA, how old are you?
A. I am 16 years old, ma'am.

Q. When is your birthday?
A. January 10, 1994, ma'am.

x x x x x x x x x

Q. Do you remember where you were in the morning of November 12, 2009?
A. Yes, ma'am.

x x x x x x x x x

Q. At 5:30 in the morning what were you doing in school?
A. When I went to the school Billie and my other classmates were there, ma'am.

Q. And what did you do upon arriving in school and seeing them?
A. We stayed in the school and Billy (sic) and ZZZ were forcing us to have a drinking spree, ma'am.

Q. You mentioned Billy (sic) and ZZZ, who are they, how did you come to know them?
A. They are my classmates, ma'am.

---

[16] *People v. Anastacio Amistoso y Broca*, G.R. No. 201447, January 9, 2013, citing *People v. Aguilar*, G.R. No. 177749, December 17, 2007.

[17] *People v. Antonio Belga*, G.R. No. 129769, January 19, 2001.

x x x x x x x x x

Q. You stated a while ago that Billie and ZZZ invited you for a drink. What was your reply to his invitation?
A. I refused because we have a class in Mape, ma'am.

Q. Was this the first time that they ever invited you for a drink?
A. No, ma'am.

Q. How many times have you been invited before?
A. Three (3) times including that incident, ma'am.

Q. Two (2) times before that. And have you ever joined them in any of these drinking sprees?
A. No, ma'am.

Q. After you have said no to the invitation of Billie and ZZZ, what did you do?
A. Arjay and me went to school and they were left, ma'am.

Q. Does this mean that Billy (sic) and ZZZ did not go to class?
A. Yes, ma'am.

x x x x x x x x x

Q. What were your activities during the day?
A. Because it was a feast day and we have nothing to do, we were just practicing our dance and our teacher told us to go to church, ma'am.

x x x x x x x x x

Q. So what did you do after your teacher told you to go to mass?
A. After that Billie and ZZZ were in the court and telling us it is better that we should not have come to class, ma'am.

Q. After that conversation where did you go?
A. We went outside the school and they were following us and we went with them, ma'am.

Q. You went with them to where?
A. In the house of Billie, ma'am.

x x x x x x x x x

Q. Upon reaching the house, what did you do?
A. ZZZ bought a drink, ma'am.

Q. Do you know the drink he bought?
A. Matador and lollipop, ma'am.

Q. What did you do with the Matador?
A. We drank it, ma'am.

Q. How much did you drink?
A. Five (5) shots I think, ma'am.

Q. Miss Witness are you used to drink that much alcohol?
A. No, ma'am.

x x x x x x x x x

Q. After drinking the five (5) shots how did you feel?
A. I felt dizzy, ma'am.

Q. Would you know how long did it take before you felt dizzy?
A. Long time, ma'am.

Q. What did you do after that?
A. Because I felt dizzy ZZZ told me to have a rest for a minute and they brought me to the room and told me to sleep first, ma'am.

Q. So upon reaching the room what did you do?
A. I slept, ma'am.

Q. When did you wake up?
A. When I felt somebody was touching my body, ma'am.

Q. Were you able to identify or see what was it that you felt during that time?
A. ZZZ, ma'am.

MS. CAPONES
Your honor, we would like to put on record that the witness is crying.

Q. You were able to see ZZZ. What was he doing to you at that time?
A. He was touching my body and he was pumping ma'am.

Q. Would you remember which part of your body he was then touching?
A. My breast, ma'am.

Q. You said "may pumatong" can you elaborate on that?
A. (Witness crying)

COURT

Q. AAA what were you wearing when you saw ZZZ beside you?
A. My underwear was lowered, your Honor.

Q. But you still had your clothes on?
A. Yes, ma'am.

Q. And why did he lower your underwear?
A. Because he wanted to do something to me, ma'am.

Q. Can you state what he did to you exactly?
A. (Witness crying)

FISCAL MOLON:

May be we can continue hearing this case inside the chamber, your Honor.

A. His penis was inserted in my vagina that is why he is pumping, ma'am.

Q. And when you saw him inserting his penis into your vagina what did you do?
A. I tried to move but there was somebody who was holding my hand, ma'am.

Q. Do you know who it was who was holding your hand?
A. No, but I only saw Billie and Bryan taking video at (sic) us and I think they were amused on (sic) what ZZZ was doing to me, ma'am.

Q. So would you know if they noticed that you were aware of what was happening to you?
A. Yes, ma'am.

Q. So what did you do when they saw you?
A. ZZZ stood up and told them "sige na nga tama na ito kahit bitin"

x x x x x x x x x

Q. You said after they noticed you that you were awake ZZZ stood up and what was your condition?
A. I felt dizzy and when ZZZ stood up somebody again mounted on me, ma'am.

x x x x x x x x x

Q. What did the second person do?
A. The same thing ZZZ did to me, ma'am.

Q. The same thing meaning he also inserted his penis into your vagina?
A. Yes, ma'am.

Q. And how did you feel?
A. I was half-conscious but I know what they were doing, ma'am.

x x x x x x x x x

Q. Before we go to that. While the second person was mounting on you (sic), where was Billie then?
A When the first person mounted on me I saw Billie but when the second person mounted on me I did not see Billie, your Honor.[18]

AAA's foregoing testimony sufficiently established that ZZZ and another man, later identified by Mary as Florencio,[19] had carnal knowledge with her. In this case, AAA was clearly in an inebriated condition when ZZZ and Florencio raped her, since AAA consumed five shots of hard liquor which she was not used to. When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped.[20] 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

---

[18] CA *rollo*, pp. 85-91.

[19] Direct testimony of Mary Malto:

Para-legal CAPONES:
Q: Then after that what happened?
A: After that ZZZ, Billie and Salvador went outside of the house, ma'am. And then Bryan went inside the room where AAA was, ma'am.

Q: Do you know why he went inside the second room?
A: Yes, ma'am.

Q: What did he do inside the room?
A: Bryan placed himself on top of AAA, ma'am.

Q: Did you see them on the bed, can you describe their clothing?
A: AAA was lying on the bed unconscious and her skirt was up, ma'am."; CA *rollo*, pp. 97-98.

[20] *People v. Edilberto Pusing y Tamor*, G.R. No. 208009, July 11, 2016.

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.[21]

As to the liability of accused-appellant, AAA positively testified that accused-appellant was inside the room recording the whole incident. The same was corroborated by Mary in her testimony. Likewise, Arjay testified[22] that when he tried to stop ZZZ from what he was doing to AAA, accused-appellant pulled and kicked him and pointed a *sumpak* at him. Accused-appellant further threatened Arjay not to brag because the latter was in the accused-appellant's territory, otherwise accused-appellant will kill Arjay.

To hold an accused guilty as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[23] To establish the existence of conspiracy, direct proof is not essential. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[24]

We quote with conformity the finding of the CA, as to accused--appellant's liability, to wit:

---

[21] *People v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

[22] CA *rollo*, p. 107.

[23] *People v. Marcelino Collado y Cunanan, et al.*, G.R. No. 185719, June 17, 2013.

[24] *People v. Datsgandawali y Gapas and Nol Pagalad y Anas*, G.R. No. 193385, December 1, 2014.

As correctly held by the court *a quo*, the act of the accused-appellant in preventing Arjay from coming to the aid of AAA when she was being sexually abused by ZZZ revealed that he was acting in confederation with ZZZ. And later when he saw that Bryan too was sexually abusing the unconscious AAA (sic) did nothing to stop him but instead went inside the room and closed the door presumably to watch the dastardly deed being done. This action of accused-appellant showed his concurrence in the criminal design of Bryan. Not to be forgotten is the fact that both AAA and Mary saw him taking a video of ZZZ raping AAA.[25]

With the finding that conspiracy exists between ZZZ, Florencio and accused-appellant, the latter is liable as a co-principal to the two counts of rape.

Accused-appellant alleged that AAA's testimony was inconsistent with the testimonies of Mary and Arjay, such that AAA simply stated that as soon as she was taken to the room, she immediately slept and was only awakened when she felt ZZZ touching her, while Mary and Arjay both testified that AAA was taken to the room, twice. We find the same immaterial to the charge of rape. Inaccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is often times not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget. Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight.[26] Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[27]

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

---

[25] *Rollo*, p. 15.

[26] *People v. Loreto Sonido y Coronel,* G.R. No. 208646, June 15, 2016.

[27] *People v. Ben Rubio y Acosta*, G.R. No. 195239, March 7, 2012.

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.[28] AAA's positive and straightforward testimony that accused-appellant was inside the room recording the dastardly act of ZZZ and Florencio, and the testimony of Arjay that accused-appellant threatened to kill him, deserve greater evidentiary weight than accused-appellant's uncorroborated defenses.

WHEREFORE, the instant appeal is **DISMISSED**. The June 16, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05589 finding Billie Gher Tuballas y Faustino **GUILTY** beyond reasonable doubt of two counts of rape is **AFFIRMED *in toto***.

SO ORDERED.

Carpio,[*] *Velasco, Jr. (Chairperson), Bersamin*, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 220022. June 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILTON ALACDIS *y* ANATIL *a.k.a.* "WELTON", DOMINGO LINGBANAN (AT-LARGE), and PEPITO ANATIL ALACDIS (AT-LARGE),** *accused.* **WILTON ALACDIS *y* ANATIL *a.k.a.* "WELTON,"** *accused-appellant.*

---

[28] *People v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

[*] Designated as additional member as per Raffle dated March 15, 2017.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. No. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE DELIVERY OF ILLICIT DRUG TO THE POSEUR-BUYER AND THE RECEIPT BY THE SELLER OF THE MARKED MONEY CONSUMMATE THE ILLEGAL TRANSACTION; ACCUSED-APPELLANT CANNOT BE HELD LIABLE FOR ILLEGAL SALE OF DANGEROUS DRUGS WHERE HE DID NOT RECEIVE CONSIDERATION/PAYMENT, BUT HE MAY STILL BE HELD LIABLE FOR THE DELIVERY AND TRANSPORT OF DANGEROUS DRUGS.—** In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the *poseur-buyer* and the receipt by the seller of the marked money consummate the illegal transaction. Inarguably, consideration/payment is one of the essential elements of illegal sale of dangerous drugs, without which, accused-appellant's conviction for said crime cannot stand. In this case, the sale of the dangerous drugs cannot be said to have been consummated because the accused-appellant did not receive consideration. He was arrested immediately after the box containing the marijuana bricks were opened for SPO2 Agbayani. x x x. As it is, We cannot agree with the findings of both the RTC and the CA that accused-appellant is liable for the illegal sale of dangerous drugs. Be that as it may, accused-appellant is not absolved of criminal liability and may still be held liable under Section 5, Article II of RA 9165 for the delivery and transport of marijuana.

2. **ID.; ID.; ID.; ILLEGAL DELIVERY AND TRANSPORT OF DANGEROUS DRUGS; ELEMENTS; PRESENT.—** The unlawful act of "delivery" is defined under Section 3, Article I of RA 9165, as follows: (k) Deliver. - Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration. To sustain a conviction for the illegal delivery of dangerous drugs, it must be proven that: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration. We find all elements present in this case.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT, 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.— SPO2 Agbayani's testimony belies accused-appellant's insistence that he was merely an innocent courier of the marijuana. x x x. It is clear from [the testimony] that the accused-appellant knew that he was delivering marijuana to SPO2 Agbayani, who testified as to the matter. It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, 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. Accused-appellant failed to present evidence to sufficiently refute SPO2 Agbayani's testimony and credibility.

4. CRIMINAL LAW; REVISED PENAL CODE; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL DELIVERY OF DANGEROUS DRUGS; POSSESSION OF CONSIDERABLE QUANTITY OF PROHIBITED DRUGS, COUPLED WITH THE FACT THAT THE POSSESSOR IS NOT A USER THEREOF, INDICATE THE INTENTION TO SELL, DISTRIBUTE OR DELIVER THE PROHIBITED DRUGS.— Accused-appellant also was unable to prove that he had the authority to possess or deliver the marijuana. The sheer volume of marijuana found also indicates the intent to deliver the same. It was settled in *People v. Hoble* that "possession of prohibited drugs, coupled with the fact that the possessor is not a user thereof, cannot indicate anything else but the intention to sell, distribute or deliver the prohibited stuff." In a recent case, the Court considered three plastic bags of marijuana leaves and seeds as considerable quantity of drugs, such that possession of similar amount of drugs and the fact that the accused is not a user of prohibited drugs clearly demonstrates his intent to sell, distribute and deliver the same. Here, accused-appellant was found in possession of almost 110 kilos of marijuana. That, in itself, is

a clear *indicia* of one's purpose and intent to sell, distribute, and transport the same.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN WEIGHING THE TESTIMONIES OF THE PROSECUTION'S WITNESSES *VIS-A-VIS* THAT OF THE DEFENSE, IT IS A WELL-SETTLED RULE THAT IN THE ABSENCE OF PALPABLE ERROR OR GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL JUDGE, THE TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF WITNESSES WILL NOT BE DISTURBED ON APPEAL.— [T]he defense failed to show any ill motive or odious intent on the part of the police officers to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as in the case of accused-appellant. Additionally, in weighing the testimonies of the prosecution's witnesses *vis-a-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.

6. CRIMINAL LAW; REVISED PENAL CODE; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL DELIVERY AND TRANSPORTATION OF DANGEROUS DRUGS; A POLICE OFFICER'S ACT OF SOLICITING DRUGS FROM THE ACCUSED DURING A BUY-BUST OPERATION, OR WHAT IS KNOWN AS A "DECOY SOLICITATION," IS NOT PROHIBITED BY LAW AND DOES NOT RENDER INVALID THE BUY-BUST OPERATION, AS THE SALE OF CONTRABAND IS A KIND OF OFFENSE HABITUALLY COMMITTED, AND THE SOLICITATION SIMPLY FURNISHES EVIDENCE OF THE CRIMINAL'S COURSE OF CONDUCT.— We also find that, contrary to the accused-appellant's claims, he was apprehended in a legitimate buy-bust operation. A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operation. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. In *People v. Sta. Maria*, the

Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation: It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Here, the solicitation by SPO2 Agbayani and the informant of drugs from Lingbanan and Alacdis, that was delivered by accused-appellant, is mere evidence of a course of conduct. The police received an intelligence report that accused-appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with the accused-appellant. There was no showing that the informant induced the accused-appellant to sell illegal drugs to him.

7. ID.; ID.; ID.; ID.; PROPER IMPOSABLE PENALTY FOR ILLEGAL DELIVERY AND TRANSPORTATION OF DANGEROUS DRUGS.— Based on the charges against and the evidence presented by the prosecution, accused-appellant is guilty beyond reasonable doubt of illegal delivery and transportation of marijuana under Article II, Section 5 of RA 9165. As to the penalty, Article II, Section 5 of RA 9165 prescribes that the penalties for the illegal delivery and transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from PhP500,000 to PhP10,000,000. We deem it proper to reduce the fine from PhP5,000,000 to PhP1,000,000 to conform with the recent jurisprudence. Thus, the accused-appellant, for his illegal delivery and transportation of 107 kilograms of marijuana, is sentenced to life imprisonment, and ordered to pay a fine of PhP1,000,000.

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 of the Decision[1] dated May 22, 2013 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04058, which affirmed the March 31, 2008 Decision[2] rendered by the Regional Trial Court (RTC), Branch 61 in Baguio City, in Criminal Case No. 28275-R, convicting accused-appellant Wilton Alacdis a.k.a Welton[3] of the illegal sale of dangerous drugs, in violation of Section 5, Article II, Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant and Domingo Lingbanan (Lingbanan) and Pepito Anatil Alacdis (Alacdis), both of whom are at-large, were charged in an Information[4] for the illegal sale, delivery and transport of 65 bricks of varying sizes and thickness, and with the weight of 110 kilograms, of dried marijuana leaves.

An entrapment operation was carried out by the agents of the Philippine Drug Enforcement Authority-Cordillera Administrative Region (PDEA-CAR) where accused-appellant was arrested. He was thereafter detained after inquest, and upon arraignment, pleaded not guilty.

During trial, the prosecution established that sometime in the first week of April 2008, SPO4 Marquez Madlon (SPO4

---

[1] Penned by Associate Justice Myra Garcia-Fernandez, concurred in by Associate Justices Normandie B. Pizarro and Stephen C. Cruz, *rollo*, pp. 2-23.

[2] Penned by Judge Antonio C. Reyes; CA *rollo*, pp. 14-26.

[3] Also referred to as "Welto" in the RTC Decision.

[4] That on or about the 6th day of May, 2008 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there, willfully, unlawfully and feloniously, sell, deliver and transport Six (6) brown cartons containing sixty five (65) bricks with different sizes, thickness, and weight of Dried Marijuana Leaves, a dangerous drugs (sic), weighing One Hundred Ten (110) kilograms, knowing fully well that said "marijuana dried leaves" are dangerous drugs, in violation of the abovementioned provision of law.

Madlon) from the Itogon, Benguet Municipal Police Office, received an information from a confidential informant that Lingbanan and Alacdis were engaged in the illegal sale of drugs in the region. SPO4 Madlon then relayed this intelligence report to Police Chief Inspector Edgar S. Apalla (PCI Apalla), Officer-in-Charge of PDEA-CAR.

SPO4 Madlon went to the PDEA-CAR Office with the confidential informant in the second week of April 2008 where it was planned that the informant would introduce SPO2 Cabily J. Agbayani (SPO2 Agbayani) as a buyer of dried marijuana.

On April 21, 2008, SPO2 Agbayani and the confidential informant met Lingbanan and Alacdis at Kinudayan Restaurant, Kilometer 6, La Trinidad, Benguet. The confidential informant introduced SPO2 Agbayani as a prospective big-time buyer from Tarlac. SPO2 Agbayani offered to buy two kilos of marijuana to test the quality and purity of the marijuana, which Lingbanan and Alacdis agreed to. However, since they did not have with them the stocks at that time, they agreed to keep in touch.

On May 3, 2008, Lingbanan and Alacdis contacted SPO2 Agbayani and informed him that he can pick up the two kilos of marijuana in Baguio City. SPO2 Agbayani paid PhP4,000 for the two kilos of marijuana at the covered court of the Baguio State University. Before leaving, SPO2 Agbayani told Lingbanan and Alacdis that he would buy more marijuana if the two kilos turned out to be of good quality.

The following day, Alacdis called SPO2 Agbayani and asked if the quality of the marijuana was up to his standard. SPO2 Agbayani said it was, and offered to buy 110 kilos of marijuana for PhP150,000. Lingbanan and Alacdis counter-offered to deliver only 107 kilos of marijuana for the said amount, to which SPO2 Agbayani agreed.

On May 5, 2008, Lingbanan contacted SPO2 Agbayani to ask if he was willing to come to Baguio City to pick up the 107 kilos of marijuana. SPO2 Agbayani agreed and informed PCI Apalla, who formed a buy-bust team as back-up.

On May 6, 2008, the transaction was set at Rizal Park, Baguio City. SPO2 Agbayani received a message from Lingbanan and Alacdis at around 10 o'clock in the morning that there was a sudden change of plans and that they were sending accused-appellant to deliver the marijuana. In a few minutes, accused-appellant arrived, and was recognized by the confidential informant as the brother of Alacdis. The confidential informant approached accused-appellant and again introduced SPO2 Agbayani as the big-time buyer of marijuana from Tarlac City. Accused-appellant told them that he had to go to La Trinidad, Benguet to pick up the marijuana and would be back within an hour.

At around 11 o'clock in the morning, Lingbanan called SPO2 Agbayani and told him that the stocks of marijuana were inside a taxi and were already on its way to Rizal Park. Accused-appellant arrived and informed SPO2 Agbayani that the marijuana was still inside the taxi. SPO2 Agbayani asked to be shown the goods first before he gives the money. Accused-appellant instructed the taxi driver to open the back of the taxi where several cartons were placed. SPO2 Agbayani could smell the marijuana. Accused-appellant opened one carton in front of SPO2 Agbayani who saw several marijuana bricks inside.

SPO2 Agbayani gave the pre-arranged signal by removing his bull cap and the back-up team rushed to the scene and arrested the accused-appellant and the taxi driver, Danny Sison. The police confiscated five cartons containing several bricks of marijuana and decided to bring the same to the PDEA-CAR Office for marking and inventory considering its volume. The booking sheet, arrest report, request for urine and physical examination and results thereof, affidavits of the police team, and inventory of the seized items were prepared. The confiscated bricks of marijuana were thereafter turned over to the Philippine National Police (PNP) Crime Laboratory in Benguet for chemical analysis.

Accused-appellant, for his part, testified that he visited a certain Oliver Telaves (Telaves) in La Trinidad, Benguet to ask for fertilizer and insecticide. While he was waiting by the

gate of Benguet State University, Danny Sison (Sison), a neighbor of Telaves, stopped in front of him while driving a taxi, and convinced him to go to Baguio City. Accused-appellant noticed that there were baggages at the back of the taxi.

When they arrived in Baguio City, they went to Rizal Park where Sison parked his taxi. Sison told accused-appellant that he had to wait for a group of persons who were going to get the baggages from the taxi. When the accused-appellant stepped out from the taxi, the persons that he later came to know as PDEA agents, suddenly grabbed him while Sison was held inside his taxi.

They were brought to the PDEA-CAR Office, where the PDEA agents attempted to convince Sison to settle the case. Accused-appellant was never informed of the reason why he was detained. Sison was later brought to a different room and accused-appellant never saw him again. Accused-appellant was given Generoso and Blue gin by the PDEA agents on the night of his arrest and the drinking session lasted until 4 o'clock in the morning the following day.

The RTC ruled that the prosecution was able to establish that there was indeed an illegal sale of dried marijuana leaves by Lingbanan and Alacdis with the indispensable cooperation of accused-appellant, who delivered and transported the *corpus delicti* to the *poseur-buyer* SPO2 Agbayani, through a legitimate buy-bust operation. The RTC considered that the entire operation actually consisted of two stages, the test-buy phase and the actual entrapment operation. It noted that the test-buy phase was significant because it led to the entrapment operation and it was that stage that brought about the negotiation of the sale of the 107 kilos of marijuana; and that the test-buy stage was part and parcel of the entire sale of marijuana that transpired between Lingbanan, Alacdis and *poseur-buyer* SPO2 Agbayani.

The RTC found that the prosecution was successful in proving the elements of illegal sale of marijuana and disposed as follows:

WHEREFORE, this Court renders judgment finding the accused Wilton Alacdis @Welton **GUILTY** beyond any reasonable doubt

and he is **SENTENCED** to Life Imprisonment and to pay a fine of ₱5,000,000.00.

Let the case against the accused Domingo Lingbanan and Pepito Alacdis, who are still at-large, be **ARCHIVED**.

SO ORDERED.[5]

On appeal, the CA sustained the findings of the RTC and affirmed the conviction, thus:

WHEREFORE, the appeal is DENIED. The decision of the Regional Trial Court of Baguio City, Branch 61, dated July 21, 2009 in Criminal Case No. 28275-R finding accused-appellant Wilton Alacdis Anatil @Welton guilty beyond reasonable doubt of illegal sale of 107 kilos of dried marijuana leaves in violation of Section 5, Article II of RA 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, and imposing upon him the penalty of life imprisonment and fine of Five Million Pesos (₱5,000,000.00), is AFFIRMED.

SO ORDERED.[6]

Seeking redress, accused-appellant prays for his acquittal, pointing out that he was not privy to the illegal sale of marijuana and the prosecution failed to prove conspiracy among the three accused. He also points out that to sustain a conviction for the delivery of dangerous drugs, knowledge on the part of an accused is a requisite; and that the prosecution was unable to establish that he intentionally and knowingly delivered the marijuana, either as a conspirator in the sale of the dangerous drugs, or in any other capacity. He further points out that the absence of the marked money negates his participation in the sale between SPO2 Agbayani and the other two accused. Accused-appellant also questions the validity of the buy-bust operation which he insists was an instigation rather than a valid buy-bust operation. Accused-appellant lastly questions the failure to abide by the chain of custody rule and the lack of finding as regards the custodial chain of the seized items.

---

[5] CA *rollo*, p. 43.

[6] *Rollo*, p. 22.

The appeal is partly meritorious.

We note that the RTC and the CA both convicted accused-appellant for violation of Section 5, Article II of RA 9165 for the illegal sale of dangerous drugs.

In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the *poseur-buyer* and the receipt by the seller of the marked money consummate the illegal transaction.[7] Inarguably, consideration/payment is one of the essential elements of illegal sale of dangerous drugs, without which, accused-appellant's conviction for said crime cannot stand.[8]

In this case, the sale of the dangerous drugs cannot be said to have been consummated because the accused-appellant did not receive consideration. He was arrested immediately after the box containing the marijuana bricks were opened for SPO2 Agbayani.

Q: When the back door of the taxi was opened, what happened after that?
A: The suspect Welton Alacdis opened it, ma'am.
Q: So what happened when you saw that he opened it?
A: I noticed that several marijuana bricks were contained in the carton, ma'am.
Q: So when you observed that it was marijuana, what happened after that?
A: Upon confirming that it was marijuana bricks, I removed my bull cap from my head as a pre-arranged signal to my back-up team that the operation gave a positive result ma'am.[9]

As it is, We cannot agree with the findings of both the RTC and the CA that accused-appellant is liable for the illegal sale of dangerous drugs. Be that as it may, accused-appellant is not absolved of criminal liability and may still be held liable under Section 5, Article II of RA 9165 for the delivery and transport of marijuana.

---

[7] *People v. Asislo*, G.R. No. 206224, January 18, 2016.

[8] *People v. Maongco*, G.R. No. 196966, October 23, 2013.

[9] *Rollo*, pp. 15-16; RTC Decision, CA *rollo*, pp, 24-25.

Section 5, Article II of RA 9165 outlines the various unlawful acts that are punishable under the said act:

> **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport** any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphasis Ours)

The unlawful act of "delivery" is defined under Section 3, Article I of RA 9165, as follows:

> (k) Deliver. — Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.

To sustain a conviction for the illegal delivery of dangerous drugs, it must be proven that: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made delivery. Worthy of note is that the delivery may be committed even without consideration.[10]

We find all elements present in this case.

SPO2 Agbayani's testimony belies accused-appellant's insistence that he was merely an innocent courier of the marijuana.

> Prosecutor Espinosa:
>
> Q: So what happened after that?
> A: Domingo Lingbanan told (sic) me through a cell phone and told me that the stocks of marijuana are on their way together with Welton Alacdis, ma'am.
> Q: So what was your response when Domingo told that the items were already coming?

[10] *Id*.

A: We waited for the arrival of the subject, ma'am.
Q: What time did the subject items arrived (sic)?
A: At around 11:00 o'clock in the morning, we notice the items being hired by Welton Alacdis arrived ma'am. (sic)

x x x x x x x x x

Q: When he approached you, what happened?
A: He told us that the marijuana leaves was at the back of the taxi, ma'am.
Q: From where you were standing, definitely you could see the inside of the taxi, is it not?
A: Yes ma'am.
Q: You could see already the items where (sic) from where you alighted?
A: Not yet ma'am. But we noticed that there were cartons loaded inside the taxi ma'am.
Q: Okay, you noticed the carton. When welton said items were inside the taxi cab, what happened after that?
A: We requested him that I would like to see first the item before I give him the buy-bust money ma'am.
Q: What happened after that when you told him that you need to see them?
A: He requested the driver to open the back of the taxi which was padlocked and the taxi driver complied.

x x x x x x x x x

Q: When the back door of the taxi was opened, what happened after that?
A: The suspect Welton Alacdis opened it, ma'am.
Q: So what happened when you saw that he opened it?
A: I noticed that several marijuana bricks were contained in the carton, ma'am.
Q: So when you observed that it was marijuana, what happened after that?
A: Upon confirming that it was marijuana bricks, I removed my bull cap from my head as a pre-arranged signal to my back-up team that the operation gave a positive result ma'am.[11]

It is clear from the foregoing that the accused-appellant knew that he was delivering marijuana to SPO2 Agbayani, who testified

[11] *Rollo*, pp. 15-16; see also RTC Decision, CA *rollo*, pp. 24-25.

as to the matter. It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, 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.[12] Accused-appellant failed to present evidence to sufficiently refute SPO2 Agbayani's testimony and credibility.

Accused-appellant also was unable to prove that he had the authority to possess or deliver the marijuana. The sheer volume of marijuana found also indicates the intent to deliver the same. It was settled in *People v. Hoble*[13] that "possession of prohibited drugs, coupled with the fact that the possessor is not a user thereof, cannot indicate anything else but the intention to sell, distribute or deliver the prohibited stuff." In a recent case, the Court considered three plastic bags of marijuana leaves and seeds as considerable quantity of drugs, such that possession of similar amount of drugs and the fact that the accused is not a user of prohibited drugs clearly demonstrates his intent to sell, distribute and deliver the same.[14]

Here, accused-appellant was found in possession of almost 110 kilos of marijuana. That, in itself, is a clear *indicia* of one's purpose and intent to sell, distribute, and transport the same.

Furthermore, the defense failed to show any ill motive or odious intent on the part of the police officers to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as in the case of accused-appellant. Additionally, in weighing the testimonies of the prosecution's witnesses *vis-a-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[15]

---

[12] *People v. Steve*, G.R. No. 204911, August 6, 2014.

[13] G.R. No. 96091, July 22, 1992.

[14] *People v. Asislo*, G.R. No. 206224, January 18, 2016.

[15] *Id*.

The prosecution was able to prove the purpose of accused-appellant's transportation of the marijuana, and his actual transportation of the dangerous drugs, through the following circumstances: (1) a prior unlawful arrangement between Lingbanan and Alacdis with SPO2 Agbayani for the purchase of marijuana; 2) Rizal Park was designated as the place of delivery and that the marijuana would be delivered by the accused-appellant at around 10-11 o'clock in the morning; 3) the five cartons of marijuana were loaded into the taxi that was ridden by the accused-appellant to Rizal Park; 4) accused-appellant opened the carton containing the marijuana to show the goods to SPO2 Agbayani prior to the payment; and 5) the buy-bust team found and confiscated a substantial amount of marijuana loaded in the taxi.

We also find that, contrary to the accused-appellant's claims, he was apprehended in a legitimate buy-bust operation. A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operation. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct.[16] In *People v. Sta. Maria*,[17] the Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation:

> It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.

Here, the solicitation by SPO2 Agbayani and the informant of drugs from Lingbanan and Alacdis, that was delivered by accused-appellant, is mere evidence of a course of conduct.

---

[16] *People v. Bartolome*, G.R. No. 191726, February 6, 2013.

[17] G.R. No. 171019, February 23, 2007.

The police received an intelligence report that accused-appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with the accused-appellant. There was no showing that the informant induced the accused-appellant to sell illegal drugs to him.[18]

The chain of custody rule was also likewise established unbroken by the prosecution, as follows: 1) accused-appellant was taken to the PDEA-CAR office where SPO2 Agbayani marked the marijuana bricks with CGA 5-06-08 due to the volume of the confiscated marijuana; 2) the marked items were personally delivered by the buy-bust team to the PDEA-CAR office; 3) the booking sheet, arrest report, request for urine and physical examination and the results of these examinations, as well as affidavits of the police officers and inventory of the seized items were prepared; 4) the marked marijuana bricks were turned over to the PNP crime laboratory for chemical analysis; 5) the laboratory examination on the confiscated marijuana gave positive result for the presence of marijuana; and 6) sample specimens were presented as evidence in court.[19]

Based on the charges against and the evidence presented by the prosecution, accused-appellant is guilty beyond reasonable doubt of illegal delivery and transportation of marijuana under Article II, Section 5 of RA 9165.

As to the penalty, Article II, Section 5 of RA 9165 prescribes that the penalties for the illegal delivery and transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from PhP500,000 to PhP10,000,000. We deem it proper to reduce the fine from PhP5,000,000 to PhP1,000,000 to conform with the recent jurisprudence.[20]

---

[18] *Supra* note 16.

[19] *Rollo*, pp. 19-20.

[20] See *People v. Asislo*: Thus, accused-appellant Asislo, for his illegal delivery and transportation of 110 kilograms of marijuana in Criminal Case No. 28307-R, is sentenced to life imprisonment, and ordered to pay a fine of One Million Pesos (₱1,000,000.00).

Thus, the accused-appellant, for his illegal delivery and transportation of 107 kilograms of marijuana, is sentenced to life imprisonment, and ordered to pay a fine of PhP1,000,000.

WHEREFORE, the appeal is **PARTLY GRANTED**. Accused-appellant Wilton Alacdis a.k.a. Welton, in Criminal Case No. 28275-R, is hereby found **GUILTY** beyond reasonable doubt of illegal delivery and transportation of 107 kilograms of marijuana penalized under Section 5, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and is sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of PhP1,000,000.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 220977. June 19, 2017]

PO1 CELSO TABOBO III *y* EBID, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL IN CRIMINAL CASES THROWS THE WHOLE CASE OPEN FOR REVIEW AND IT IS THE DUTY OF THE APPELLATE COURT TO CORRECT, CITE AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— "Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed

judgment whether they are assigned or unassigned." This rule is strictly observed, particularly where the liberty of the accused is at stake, as in the extant case. Thus, while the Court generally firmly adheres to the principle that factual 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, the same is not ironclad and applicable at all times.

2. ID.; EVIDENCE; ADMISSIBILITY; ADMISSION AND CONFESSION; AN ADMISSION OF FACT IS NOT TANTAMOUNT TO A CONFESSION OF GUILT; ADMISSION OF FACT DISTINGUISHED FROM CONFESSION.— [T]he fact that the petitioner may have admitted shooting Martin in the said documents does not necessarily establish his guilt for the crime charged. An admission of fact is starkly different from, and is not tantamount to, a confession of guilt. In *People of the Philippines v. Buntag,* the Court elucidated that: In criminal cases, an admission is something less than a confession. It is but a statement of facts by the accused, direct or implied, which do not directly involve an acknowledgment of his guilt or of his criminal intent to commit the offense with which he is bound, against his interests, of the evidence or truths charged. It is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt. A confession, on the other hand, is an acknowledgment, in express terms, of his guilt of the crime charged.

3. ID.; ID.; ID.; WHILE AFFIDAVITS MAY BE CONSIDERED AS PUBLIC DOCUMENTS IF THEY ARE ACKNOWLEDGED BEFORE A NOTARY PUBLIC, THESE AFFIDAVITS ARE STILL CLASSIFIED AS HEARSAY EVIDENCE, UNLESS THE AFFIANTS THEMSELVES ARE PLACED ON THE WITNESS STAND TO TESTIFY THEREON.— [T]he Court notes that while the Sworn Statement, Counter-Affidavit, and Joint Rejoinder may be considered as the petitioner's admission as to the fact of the killing, the same were never identified by the petitioner in court since he never took the witness stand, and is thus, hearsay as regards to him. As elucidated in *Republic of the Philippines v. Marcos-Manotoc, et al.,* affidavits are considered as hearsay evidence unless the affiants themselves testify thereon: Basic

is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon. The RTC, therefore, should not have readily relied on the said documents to establish the petitioner's admission of the killing, more so when the admission was not corroborated by evidence, except for the Crime Report.

4. **CRIMINAL LAW; THE REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.—** The Court observes that the petitioner pleaded not guilty to the killing during arraignment and invoked the justifying circumstance of defense of a stranger under Article 11 of the Revised Penal Code. One who invokes self-defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. He must show by clear and convincing evidence that he indeed acted in self-defense, or in defense of a relative or a stranger. With clear and convincing evidence, all the following elements of self-defense must be established: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.

5. **ID.; ID.; ID.; ID.; ONCE AN ACCUSED HAD ADMITTED THAT HE INFLICTED THE FATAL INJURIES ON THE DECEASED, IT WAS INCUMBENT UPON HIM, IN ORDER TO AVOID CRIMINAL LIABILITY, TO PROVE THE JUSTIFYING CIRCUMSTANCE CLAIMED BY HIM WITH CLEAR, SATISFACTORY AND CONVINCING EVIDENCE, FOR HE CANNOT RELY ON THE WEAKNESS OF THE PROSECUTION BUT ON THE STRENGTH OF HIS OWN EVIDENCE.—** In *People v. Patrolman Belbes,* the Court ruled: It is well settled in this

jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, "for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing." Thus, the petitioner must establish with clear and convincing evidence that the killing was justified, and that he incurred no criminal liability therefor.

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT TO DUE PROCESS; ACCUSED WAS DENIED OF HIS RIGHT TO DUE PROCESS WHERE HE WAS DEPRIVED OF THE OPPORTUNITY TO EFFECTIVELY PRESENT HIS EVIDENCE AND TO DEFEND HIMSELF DUE TO THE GROSS AND PALPABLE NEGLIGENCE AND INCOMPETENCE OF HIS COUNSEL, THUS, VITIATING THE INTEGRITY OF THE PROCEEDINGS BEFORE THE TRIAL COURT.—** [T]he petitioner was deprived of such opportunity to effectively present his evidence and to defend himself due to the gross and palpable negligence and incompetence of his counsel. Such deprivation amounts to a denial of the petitioner's due process, vitiating the integrity of the proceedings before the trial court. Evidently, the trial was marked by gross negligence and incompetence of the petitioner's counsel due to numerous delays and postponements. x x x. Moreover, the petitioner's counsel failed to ask for reconsideration of the RTC order, knowing fully well that PO2 De Leon's testimony of what transpired in the police station is crucial to the petitioner's defense. Likewise, no formal offer of exhibit was filed for the defense. Thus, the petitioner's counsel can hardly be considered to have defended the petitioner at all.

7. **ID.; ID.; ID.; ID.; THE NEGLIGENCE AND MISTAKES OF COUNSEL BIND THE CLIENT EXCEPT WHERE THE LAWYER'S GROSS NEGLIGENCE WOULD RESULT IN THE GRAVE INJUSTICE OF DEPRIVING HIS CLIENT OF THE DUE PROCESS OF LAW.—** It is, however, an oft-repeated ruling that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about

never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. The only exception would be where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law. The Court finds that the exception applies in this case. The petitioner is, without doubt, entitled to competent legal representation from his counsel. In *Sanico v. People,* the Court held that: If the incompetence of counsel was so great and the error committed as a result was so serious that the client was prejudiced by a denial of his day in court, the litigation ought to be reopened to give to the client another chance to present his case. The legitimate interests of the petitioner, particularly the right to have his conviction reviewed by the RTC as the superior tribunal, should not be sacrificed in the altar of technicalities.

8. ID.; ID.; NEW TRIAL; WARRANTED WHERE IRREGULARITIES PREJUDICIAL TO THE RIGHTS OF THE ACCUSED ATTENDED THE TRIAL.— [I]n *Reyes v. CA*, the Court held that in cases where the counsel is grossly negligent as to deprive the accused of his constitutional right to be heard, the conviction should not be based solely on the evidence of the prosecution. x x x. In the *Reyes* case, the Court resolved to remand the case to the RTC for further reception of the accused's evidence. Hence, in accordance with the Court's pronouncement in *Reyes,* and in view of the irregularities prejudicial to the rights of the petitioner that attended the trial, the case calls for a new trial pursuant to Section 2 of Rule 121 of the Rules of Court. The case should be remanded to the trial court to enable the petitioner to effectively defend himself and present evidence.

APPEARANCES OF COUNSEL

Bernardino M. Mortera for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Decision[2] dated January 23, 2015 and the Resolution[3] dated October 12, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35948, affirming the Decision[4] dated May 15, 2013 of the Regional Trial Court (RTC) of Manila, Branch 41, convicting Police Officer 1 Celso Tabobo III *y* Ebid (petitioner) of the crime of Homicide in Criminal Case No. 06-248576.

Facts

On January 19, 2005, at around 7:00 a.m., Manuel Zachary Escudero *y* Araneta (Escudero) was walking along P. Ocampo Street, Manila when two men riding on a motorcycle in tandem suddenly approached him and grabbed his cellphone. The back rider then fired a shot at Escudero, resulting to his death. The incident was reported to Police Station 9 (PS-9) of the Manila Police District. Station Commander Police Superintendent Marcelino DL Pedrozo, Jr. (P/Supt. Pedrozo) dispatched a team of police officers to the crime scene. After conducting a manhunt operation, the team arrested two suspects who fit the description given by witnesses, namely, Victor Ramon Martin *y* Ong (Martin) and Leopoldo Villanueva. They were directly brought to PS-9 for investigation and both were detained at the detention cell of the PS-9 located at the rooftop.[5]

On January 20, 2005, at around 4:00 a.m., Police Officer 2 Jesus De Leon (PO2 De Leon) was interviewing Martin at the

---

[1] *Rollo,* pp. 8-25.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Florito S. Macalino and Pedro B. Corales concurring; *id*. at 49-66.

[3] *Id*. at 80-82.

[4] Rendered by Presiding Judge Rosalyn D. Mislos-Loja; *id*. at 28-47.

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

second floor of PS-9 when the latter requested to remove his handcuffs to answer the call of nature. When PO2 De Leon removed the handcuffs, Martin suddenly grabbed his service firearm. A scuffle ensued and the gun went off. The petitioner, who was then at the ground floor, heard the gunshot and proceeded to the second floor. After seeing P02 De Leon almost subdued by Martin, the petitioner fired his gun twice and hit Martin on the chest. Martin was rushed to the Ospital ng Maynila but he was declared dead upon arrival.[6]

Consequently, the petitioner was charged with the crime of Homicide for Martin's death before the RTC of Manila.[7]

The prosecution presented Dr. Ravell Ronald R. Baluyot (Dr. Baluyot), the physician who conducted the autopsy on Martin's body.[8] He testified that Martin bore two gunshot wounds on the chest.[9] Considering that the exit wounds were higher than the entrance wounds, it was possible that Martin was shot by someone who was positioned lower than him.[10] Dr. Baluyot also testified that Martin had various injuries that could have been caused by forceful contact with hard, blunt objects.[11]

On the other hand, the defense presented P/Supt. Pedrozo who testified that when he was informed of a robbery incident, he dispatched a team of police officers to investigate. On the same day, he learned that the suspects were arrested. However, he had no personal knowledge of the incident surrounding Martin's death.[12]

PO2 De Leon initially took the witness stand for his direct examination. However, he was not able to complete his testimony

---

[6] *Id*. at 32.

[7] *Id*. at 28.

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

[9] *Id*. at 34.

[10] *Id*. at 35.

[11] *Id*. at 34.

[12] *Id*. at 38-41.

prompting the RTC to order his direct testimony to be stricken off the records. Accordingly, the case was considered submitted for decision.[13]

Ruling of the RTC

On May 15, 2013, the RTC rendered a Decision[14] convicting the petitioner of the crime charged. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the [petitioner] guilty beyond reasonable doubt for the crime of Homicide and sentencing him to suffer the penalty of reclusion temporal, imposed in its medium period.
>
> However, for lack of basis, no civil liability is adjudged.
>
> x x x x x x x x x
>
> SO ORDERED.[15]

In so ruling, the RTC held that the petitioner failed to prove that all the elements of justifying circumstance of defense of a stranger are present in this case.[16]

On July 1, 2013, the petitioner filed a Very Urgent Motion to allow accused to avail of the remedy of appeal by accepting his justification and further allow him temporary liberty under his original bond. He later filed an Extremely Urgent Motion for Reconsideration and New Trial. The petitioner alleged that his counsel's gross mistake and negligence deprived him of his right to due process.[17]

The RTC issued an Order allowing the petitioner to post cash bail in the amount of ₱150,000.00. However, the RTC deferred the resolution of the motion for new trial and informed

---

[13] *Id*. at 31.

[14] *Id*. at 28-47.

[15] *Id*. at 46.

[16] *Id*. at 42-43.

[17] *Id*. at 56-57.

the petitioner that should he choose to avail of the remedy of appeal, the entire records would be forwarded to the CA. Hence, the petitioner appealed to the CA.[18]

Ruling of the CA

The CA in its Decision[19] dated January 23, 2015, affirmed the decision of the RTC, to wit:

> **WHEREFORE,** in view of the foregoing, the Decision dated May 15, 2013 rendered by the RTC of Manila, Branch 41, in Criminal Case No. 06-248576, is **AFFIRMED,** with the **MODIFICATION** that the [petitioner] is sentenced to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of *prision mayor,* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as maximum, and to pay the heirs of the victim, [Martin], Fifty Thousand Pesos (₱50,000.00) as civil indemnity.
>
> **SO ORDERED.**[20] (Citation omitted)

The CA reasoned that the prosecution need not prove the elements of homicide considering that the burden of proof in this case has shifted to the petitioner for interposing the justifying circumstance of defense of a stranger.[21] However, it concurred with the findings of the RTC that the defense failed to prove the existence of all the elements of defense of a stranger.[22]

The petitioner moved for reconsideration[23] of the CA decision, but the motion was denied in a Resolution[24] dated October 12, 2015. Hence, the present petition.

The petitioner argues that he was denied due process in court due to the gross negligence and incompetence of his counsel

---

[18] *Id*. at 57.

[19] *Id*. at 49-66.

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

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

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

[23] *Id*. at 67-70.

[24] *Id*. at 80-82.

before the trial court. Moreover, he asserts that the CA should have considered the stipulations made by the parties respecting the Crime Report that Senior Police Officer 2 Edmundo C. Cabal (SPO2 Cabal) executed to the effect that the petitioner acted in defense of PO2 De Leon when he shot the victim, which consequently relieves him of his duty to prove the elements of the justifying circumstance of defense of a stranger.[25]

Issue

Whether or not the CA erred in affirming the petitioner's conviction for the crime of homicide.

Ruling of the Court

The petition is partly meritorious.

"Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned."[26] This rule is strictly observed, particularly where the liberty of the accused is at stake, as in the extant case. Thus, while the Court generally firmly adheres to the principle that factual 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,[27] the same is not ironclad and applicable at all times.

In convicting the petitioner, the RTC and the CA primarily relied on the testimony of the prosecution witness, SPO2 Cabal's Crime Report, and the petitioner's declarations in his Sworn Statement, Counter-Affidavit, and Joint Rejoinder. The CA held that the petitioner admitted shooting Martin as stated in his Sworn Statement dated January 26, 2006, Counter-Affidavit dated March 21, 2006 and Joint Rejoinder dated April 25, 2006.

---

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

[26] *People of the Philippines v. Dahil, et al.,* 750 Phil. 212, 225 (2015).

[27] *Guevarra, et al. v. People,* 726 Phil. 183, 193 (2014).

It further noted that in his Appellant's Brief, the petitioner relied on the "defense of a stranger" as justification for his act. Thus, the CA concluded that the petitioner admitted that he killed the victim.[28]

However, the fact that the petitioner may have admitted shooting Martin in the said documents does not necessarily establish his guilt for the crime charged. An admission of fact is starkly different from, and is not tantamount to, a confession of guilt. In *People of the Philippines v. Buntag,*[29] the Court elucidated that:

> In criminal cases, an admission is something less than a confession. It is but a statement of facts by the accused, direct or implied, which do not directly involve an acknowledgment of his guilt or of his criminal intent to commit the offense with which he is bound, against his interests, of the evidence or truths charged. It is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt. A confession, on the other hand, is an acknowledgment, in express terms, of his guilt of the crime charged.[30] (Citations omitted)

In this case, the Court notes that while the Sworn Statement, Counter-Affidavit, and Joint Rejoinder may be considered as the petitioner's admission as to the fact of the killing, the same were never identified by the petitioner in court since he never took the witness stand, and is thus, hearsay as regards to him. As elucidated in *Republic of the Philippines v. Marcos-Manotoc, et al.,*[31] affidavits are considered as hearsay evidence unless the affiants themselves testify thereon:

> Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by

---

[28] *Rollo,* pp. 57-59.

[29] 471 Phil. 82 (2004).

[30] *Id.* at 95.

[31] 681 Phil. 380 (2012).

another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[32] (Citation omitted)

The RTC, therefore, should not have readily relied on the said documents to establish the petitioner's admission of the killing, more so when the admission was not corroborated by evidence, except for the Crime Report.

The Court observes that the petitioner pleaded not guilty to the killing during arraignment and invoked the justifying circumstance of defense of a stranger under Article 11 of the Revised Penal Code. One who invokes self-defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. He must show by clear and convincing evidence that he indeed acted in self-defense, or in defense of a relative or a stranger. With clear and convincing evidence, all the following elements of self-defense must be established: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.[33]

In *People v. Patrolman Belbes,*[34] the Court ruled:

It is well settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, "for even if the evidence of the

---

[32] *Id*. at 404-405.

[33] *People v. SPO2 Magnabe, Jr.,* 435 Phil. 374, 390 (2002); *People v. Asuela,* 426 Phil. 428, 443 (2002); *Salcedo v. People,* 400 Phil. 1302, 1311 (2000).

[34] 389 Phil. 500 (2000).

prosecution were weak it could not be disbelieved after the accused himself had admitted the killing."[35] (Citations omitted)

Thus, the petitioner must establish with clear and convincing evidence that the killing was justified, and that he incurred no criminal liability therefor. However, the petitioner was deprived of such opportunity to effectively present his evidence and to defend himself due to the gross and palpable negligence and incompetence of his counsel. Such deprivation amounts to a denial of the petitioner's due process, vitiating the integrity of the proceedings before the trial court.

Evidently, the trial was marked by gross negligence and incompetence of the petitioner's counsel due to numerous delays and postponements. The Court notes that the petitioner's counsel failed to attend the hearings set on September 21, 2011, October 17, 2011, November 16, 2011, November 5, 2012, November 26, 2012, and March 18, 2013 despite notice, all of which were crucial for the defense. As a result, the RTC ordered the initial testimony of PO2 De Leon, the sole witness to the shooting, to be stricken off the records and to consider the presentation of the defense's evidence waived.[36]

Moreover, the petitioner's counsel failed to ask for reconsideration of the RTC order, knowing fully well that PO2 De Leon's testimony of what transpired in the police station is crucial to the petitioner's defense. Likewise, no formal offer of exhibit was filed for the defense. Thus, the petitioner's counsel can hardly be considered to have defended the petitioner at all.

It is, however, an oft-repeated ruling that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.[37]

---

[35] *Id*. at 507.

[36] *Rollo,* pp. 62-63.

[37] *Lagua v. CA, et al.,* 689 Phil. 452, 458 (2012); *Panay Railways, Inc. v. Heva Management and Development Corporation, et al.,* 680 Phil. 1, 9 (2012).

The only exception would be where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law.[38] The Court finds that the exception applies in this case.

The petitioner is, without doubt, entitled to competent legal representation from his counsel. In *Sanico v. People*,[39] the Court held that:

> If the incompetence of counsel was so great and the error committed as a result was so serious that the client was prejudiced by a denial of his day in court, the litigation ought to be reopened to give to the client another chance to present his case. The legitimate interests of the petitioner, particularly the right to have his conviction reviewed by the RTC as the superior tribunal, should not be sacrificed in the altar of technicalities.[40]

Furthermore, in *Reyes v. CA*,[41] the Court held that in cases where the counsel is grossly negligent as to deprive the accused of his constitutional right to be heard, the conviction should not be based solely on the evidence of the prosecution, thus:

> It was Atty. Tenorio's absences, then, rather than petitioner's, which appear to be the cause for the defense's failure to present its evidence. Atty. Tenorio's negligence did not consist in error of procedure or even a lapse in strategy but something as basic as failing to appear in court despite clear warning that such failure would amount to waiver of her client's right to present evidence in her defense.
>
> Keeping in mind that this case involves personal liberty, the negligence of counsel was certainly so gross that it should not be allowed to prejudice petitioner's constitutional right to be heard. The judicial conscience certainly cannot rest easy on a conviction based solely on the evidence of the prosecution just because the presentation of the defense evidence had been barred by technicality. Rigid application of rules must yield to the duty of courts to render

---

[38] *Pasiona, Jr. v. CA, et al.,* 581 Phil. 124, 134 (2008).

[39] G.R. No. 198753, March 25, 2015, 754 SCRA 416.

[40] *Id.* at 427-428.

[41] 335 Phil. 206 (1997).

justice where justice is due — to secure to every individual all possible legal means to prove his innocence of a crime with which he or she might be charged.[42] (Citation omitted)

In the *Reyes* case, the Court resolved to remand the case to the RTC for further reception of the accused's evidence. Hence, in accordance with the Court's pronouncement in *Reyes,* and in view of the irregularities prejudicial to the rights of the petitioner that attended the trial, the case calls for a new trial pursuant to Section 2[43] of Rule 121 of the Rules of Court. The case should be remanded to the trial court to enable the petitioner to effectively defend himself and present evidence.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The Decision dated January 23, 2015 and Resolution dated October 12, 2015 of the Court of Appeals in CA-G.R. CR No. 35948 and the Decision dated May 15, 2013 of the Regional Trial Court of Manila, Branch 41 in Criminal Case No. 06-248576 are hereby **REVERSED** and **SET ASIDE.** The case is **REMANDED** to the Regional Trial Court of Manila for a new trial for the purpose of allowing Police Officer 1 Celso Tabobo III *y* Ebid to present evidence in his defense with directive to the court thereafter to decide the case with all deliberate speed.

SO ORDERED.

Velasco, Jr. (Chairperson),[*] *Peralta, Bersamin,* and *Tijam, JJ.,* concur.

---

[42] *Id*. at 215.

[43] Sec. 2. *Grounds for a new trial.* – The court shall grant a new trial on any of the following grounds:

(a) The errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) The new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

[*] Additional Member per Raffle dated April 26, 2017 *vice* Associate Justice Francis H. Jardeleza.

SECOND DIVISION

[G.R. No. 221085. June 19, 2017]

RAVENGAR G. IBON, *petitioner, vs.* **GENGHIS KHAN SECURITY SERVICES and/or MARIETTA VALLESPIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT ARE BEYOND THE AMBIT THEREOF AS IT IS LIMITED TO REVIEWING ONLY QUESTIONS OF LAW; EXCEPTIONS; PRESENT.— Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact. One of the exceptions is when the findings of fact are conflicting. The present petition falls under this exception as the findings of fact by the NLRC, as affirmed by the CA, differed from those of the LA. The LA found that petitioner was constructively dismissed whereas, the NLRC and the CA opined that petitioner was never dismissed.

2. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; TEMPORARY OFF-DETAIL OF A SECURITY GUARD IS GENERALLY ALLOWED, BUT IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL IF THE FLOATING STATUS EXTENDS BEYOND SIX (6) MONTHS.— In *Reyes v. RP Guardians Security Agency*, the Court held that temporary off-detail of a security guard is generally allowed, but is tantamount to constructive dismissal if the floating status extends beyond six (6) months, to wit: Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. **Nonetheless, when the floating status lasts for more than**

six (6) months, the employee may be considered to have been constructively dismissed. No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.

3. **ID.; ID.; ID.; ID.; WHEN IT EXISTS.—** [C]onstructive dismissal may exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it can foreclose any choice by him except to forego his continued employment or when there is cessation of work because continued employment is rendered impossible, or unlikely, as an offer involving a demotion in rank and a diminution in pay.

4. **ID.; ID.; ID.; ID.; IT IS INCUMBENT UPON THE EMPLOYER TO SHOW THAT THE SECURITY GUARD WAS REDEPLOYED WITHIN SIX (6) MONTHS FROM HIS/HER LAST DEPLOYMENT, OTHERWISE, A SECURITY GUARD WOULD BE DEEMED TO HAVE BEEN CONSTRUCTIVELY DISMISSED.—** In the case at bench, petitioner was last deployed on October 4, 2010. Thus, it was incumbent upon respondent to show that he was redeployed within six (6) months from the said date. Otherwise, petitioner would be deemed to have been constructively dismissed. A perusal of the records, however, reveals that aside from respondent's bare assertions that petitioner was suspended, which the latter had denied, there was no evidence of the imposition of said penalty. Respondent could have easily produced documents to support its contention that petitioner had been suspended, considering that employers are required to observe due process in the discipline of employees.

5. **ID.; ID.; ID.; ID.; AN EMPLOYER IS GUILTY OF CONSTRUCTIVE DISMISSAL WHERE IT NEVER ATTEMPTED TO REDEPLOY THE SECURITY GUARD TO A DEFINITE ASSIGNMENT OR SECURITY DETAIL WITHIN SIX (6) MONTHS FROM HIS LAST ASSIGNMENT.—** [R]espondent should have deployed petitioner to a **specific** client within six (6) months from his last assignment. The correspondences allegedly sent to petitioner merely required him to explain why he did not report to work. He was never assigned to a particular client. Thus, even if petitioner actually received the letters of respondent, he was still constructively dismissed because none of these letters

indicated his reassignment to another client. Unlike in *Ecoxet Security* and *JFLP Investigation*, respondent is guilty of constructive dismissal because it never attempted to redeploy petitioner to a definite assignment or security detail.

6. ID.; ID.; ID.; ID.; THE OFFER OF REINSTATEMENT WILL NOT ABSOLVE THE EMPLOYER FROM THE CONSEQUENCES OF THE EMPLOYEE'S DISMISSAL WHERE AT THE TIME THE OFFER FOR REINSTATEMENT WAS MADE, THE EMPLOYEE'S CONSTRUCTIVE DISMISSAL HAD LONG BEEN CONSUMMATED.— [P]etitioner's refusal to accept the offer of reinstatement could not have the effect of validating an otherwise constructive dismissal considering that the same was made only after petitioner had filed a case for illegal dismissal. Further, at the time the offer for reinstatement was made, petitioner's constructive dismissal had long been consummated. Such belated gesture does not absolve respondent from the consequences of petitioner's dismissal.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the July 3, 2015 Decision[1] and October 13, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 125948, which affirmed the April 24, 2012 Decision[3] and the May 22, 2012 Resolution[4] of the National Labor Relations

---

[1] *Rollo*, pp. 39-44.

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

[3] Penned by Commissioner Gregorio O. Bilog III, with Commissioner Pablo C. Espiritu Jr. concurring and Presiding Commissioner Alex A. Lopez on leave; *id*. at 158-164.

[4] *Id*. at 176-177.

Commission *(NLRC)* in NLRC LAC No. 01-000503-12(8)/NLRC NCR CN. 05-07463-11, a case for illegal dismissal.

Ravengar G. Ibon *(petitioner)* was employed as a security guard by Genghis Khan Security Services *(respondent)* sometime in June 2008. He was initially assigned to a certain Mr. Solis in New Manila, Quezon City. In July 2008, he was transferred to the 5th Avenue Condominium in Fort Bonifacio, Taguig City, in September 2008 and was posted there until May 2009.[5]

In June 2009, petitioner was transferred to the Aspen Tower Condominium until his last duty on October 4, 2010. Thereafter, respondent promised to provide him a new assignment, which, however, did not happen.[6]

On May 10, 2011, petitioner filed a Complaint[7] against respondent for illegal dismissal, with claims for underpayment of wages, holiday and rest day premiums, service incentive leave pay, non-payment of separation pay, and reimbursement of illegal deductions.[8] He alleged that he was no longer assigned to a new post after his last duty on October 4, 2010; that he was merely receiving a daily salary of ₱384.00; and that in the course of his employment, respondent would deduct ₱200.00 per month as cash bond from September 2008 until September 2010.[9]

For his part, respondent denied that petitioner was placed on a floating status for more than six (6) months. It claimed that he was suspended on October 4, 2010 for sleeping on the job. Respondent added that petitioner was endorsed to another client for re-assignment, which the latter refused because his license was due for renewal. Since then, petitioner failed to report for work.[10]

---

[5] *Id*. 74.

[6] *Id*.

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

[8] *Id*. at 13.

[9] *Id*. at 14.

[10] *Id*.

Sometime in November 2010, petitioner went to respondent's office to claim his 13th month pay, but the same was not given to him because it was not yet due. Respondent then received a call from the Department of Labor and Employment *(DOLE)* regarding petitioner's claim for 13th month pay, which was later on settled during the proceedings before the DOLE. It then sent letters to petitioner requiring him to report for work, but he did not show up. Hence, respondent was surprised to receive summons regarding the complaint for illegal dismissal.[11]

The LA Ruling

In its November 29, 2011 Decision,[12] the Labor Arbiter *(LA)* declared petitioner to have been constructively dismissed because of respondent's failure to put him on duty for more than six (6) months. It ordered respondent to pay petitioner backwages from May 5, 2011, the effective date of the constructive dismissal. The LA also granted petitioner's prayer for separation pay in view of the parties' strained relationship, as well as his claims for wage differential, service incentive leave pay and reimbursement of his cash bond.

Aggrieved, respondent appealed to the NLRC.

The NLRC Ruling

In its April 24, 2012 Decision, the NLRC *reversed* and *set aside* the decision of the LA. It opined that there was no constructive dismissal because respondent did not intend to indefinitely place petitioner on a floating status. The NLRC noted that respondent sent letters to petitioner requiring him to report back to work within the six-month period. It added that respondent offered to reinstate petitioner during the proceedings before the LA, but the said offer was rejected by the latter.

Further, the NLRC pointed out that even if the letters were not received by petitioner, respondent's act of sending them showed that it did not wish to sever the employer-employee

---

[11] *Id*. at 15.

[12] *Id*. at 134-139.

relationship. It, nevertheless, sustained the money claims awarded by the LA.

Petitioner moved for reconsideration, but his motion was denied by the NLRC in a Resolution dated May 22, 2012.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed Decision, dated July 3, 2015, the CA *affirmed* the NLRC finding that petitioner was not constructively dismissed. It wrote that the evidence on record showed that petitioner was required to report back to work and that on October 21, 2010, he was offered a new assignment, which he refused. The CA concluded that there was no dismissal to speak of as it was petitioner who manifested his lack of interest in going back to work.

Hence, this petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE PETITIONER WAS NOT ILLEGALLY DISMISSED FROM EMPLOYMENT; AND

II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RULING OF THE NLRC THAT THE PETITIONER IS NOT ENTITLED TO HIS MONETARY CLAIMS DUE TO ILLEGAL DISMISSAL.[13]

Petitioner argues that he did not receive the letters requiring him to report back to work; that a perusal of the letters revealed that the same did not indicate a specific assignment; that respondent had no intention to reinstate him considering that

[13] *Id*. at 20.

he was placed on a floating status for a long period of time; and that he was entitled to moral damages, exemplary damages and attorney's fees.

In its Comment,[14] dated March 21, 2016, respondent averred that petitioner's claim of illegal dismissal could not overcome the evidence it presented to show that no dismissal took place; and that moral and exemplary damages could only be awarded only when there is a finding of illegal dismissal and such dismissal is borne out with malice and bad faith on the part of the employer.

In his Reply,[15] dated January 31, 2017, petitioner contended that the lack of service assignment for a continuous period of six (6) months is an authorized cause for the termination of the employee, who is then entitled to separation pay; and that respondent's offer of reinstatement was meant to negate an otherwise consummated act of illegal dismissal.

The Court's Ruling

The petition is meritorious.

Only questions of law may be raised in a Rule 45 petition; exceptions

Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact. One of the exceptions is when the findings of fact are conflicting.[16] The present petition falls under this exception as the findings of fact by the NLRC, as affirmed by the CA, differed from those of the LA. The LA found that petitioner was constructively dismissed whereas, the NLRC and the CA opined that petitioner was never dismissed.

---

[14] *Id.* at 230-233.

[15] *Id.* at 245-255.

[16] *Co v. Vargas*, 676 Phil. 463, 471 (2011).

Security guard on floating status vis-à-vis constructive dismissal

Respondent refutes petitioner's constructive dismissal by arguing that the latter was not placed on a floating status for more than six (6) months because he was suspended on October 4, 2010 for sleeping on the job. Further, it asserts that it sent letters to petitioner requiring him to report back to work and that it offered reinstatement during the proceedings before the LA, which petitioner turned down. These arguments, notwithstanding, there is basis to hold that petitioner was constructively dismissed.

In *Reyes v. RP Guardians Security Agency*,[17] the Court held that temporary off-detail of a security guard is generally allowed, but is tantamount to constructive dismissal if the floating status extends beyond six (6) months, to wit:

> Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. **Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.** No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.[18] [Emphasis supplied]

Relative thereto, constructive dismissal may exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it can foreclose any choice by him except to forego his continued employment[19] or when there is cessation of work because

---

[17] 708 Phil. 598 (2013).

[18] *Id*. at 603-604.

[19] *Central Azucarera de Bais, Inc. v. Siason*, G.R. No. 215555, July 29, 2015, 764 SCRA 494, 501.

continued employment is rendered impossible, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[20]

Security guard on floating status must be assigned to a specific posting

In the case at bench, petitioner was last deployed on October 4, 2010. Thus, it was incumbent upon respondent to show that he was redeployed within six (6) months from the said date. Otherwise, petitioner would be deemed to have been constructively dismissed.

A perusal of the records, however, reveals that aside from respondent's bare assertions that petitioner was suspended, which the latter had denied, there was no evidence of the imposition of said penalty. Respondent could have easily produced documents to support its contention that petitioner had been suspended, considering that employers are required to observe due process in the discipline of employees.

Respondent could not rely on its letter requiring petitioner to report back to work to refute a finding of constructive dismissal. The letters, dated November 5, 2010 and February 3, 2011, which were supposedly sent to petitioner merely requested him to report back to work and to explain why he failed to report to the office after inquiring about his posting status. More importantly, there was no proof that petitioner had received the letters.

In *Tatel v. JLFP Investigation (JFLP Investigation)*,[21] the Court initially found that the security guard was constructively dismissed notwithstanding the employer's letter ordering him to report back to work. It expounded that in spite of the report-to-work order, the security guard was still constructively dismissed because he was not given another detail or assignment. On motion for reconsideration, however, the Court reversed

---

[20] *MegaForce Security and Allied Services, Inc. v. Lactao*, 581 Phil. 100, 107 (2008).

[21] G.R. No. 206942, February 25, 2015, 752 SCRA 55.

its ruling after it was shown that the security guard was in fact assigned to a specific client, but the latter refused the same and opted to wait for another posting.

A holistic analysis of the Court's disposition in *JFLP Investigation* reveals that: [1] an employer must assign the security guard to another posting within six (6) months from his last deployment, otherwise, he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.

In *Exocet Security and Allied Services Corporation v. Serrano (Exocet Security)*,[22] the Court absolved the employer even if the security guard was on a floating status for more than six (6) months because the latter refused the reassignment to another client, to wit:

> In the controversy now before the Court, there is no question that the security guard, Serrano, was placed on floating status after his relief from his post as a VIP security by his security agency's client. Yet, there is no showing that his security agency, petitioner Exocet, acted in bad faith when it placed Serrano on such floating status. What is more, **the present case is not a situation where Exocet did not recall Serrano to work within the six-month period as required by law and jurisprudence. Exocet did, in fact, make an offer to Serrano to go back to work.** x x x
>
> Clearly, Serrano's lack of assignment for more than six months cannot be attributed to petitioner Exocet. On the contrary, records show that, as early as September 2006, or one month after Serrano was relieved as a VIP security, Exocet had already offered Serrano a position in the general security service **because there were no available clients requiring positions for VIP security.** Notably, even though the new assignment does not involve a demotion in rank or diminution in salary, pay, or benefits, **Serrano declined the position because it was not the post that suited his preference, as he insisted on being a VIP Security.** x x x
>
> Thus, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case

[22] 744 Phil. 403 (2014).

of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post. This is especially true in the present case where the security guard's own refusal to accept a non-VIP detail was the reason that he was not given an assignment within the six-month period. The security agency, Exocet, should not then be held liable.[23] [Emphases supplied]

Applying the foregoing to the present controversy, respondent should have deployed petitioner to a **specific** client within six (6) months from his last assignment. The correspondences allegedly sent to petitioner merely required him to explain why he did not report to work. He was never assigned to a particular client. Thus, even if petitioner actually received the letters of respondent, he was still constructively dismissed because none of these letters indicated his reassignment to another client. Unlike in *Ecoxet Security* and *JFLP Investigation*, respondent is guilty of constructive dismissal because it never attempted to redeploy petitioner to a definite assignment or security detail.

Further, petitioner's refusal to accept the offer of reinstatement could not have the effect of validating an otherwise constructive dismissal considering that the same was made only after petitioner had filed a case for illegal dismissal. Further, at the time the offer for reinstatement was made, petitioner's constructive dismissal had long been consummated.[24] Such belated gesture does not absolve respondent from the consequences of petitioner's dismissal.

WHEREFORE, the July 3, 2015 Decision and October 13, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 125948 are **REVERSED and SET ASIDE.** The November 29, 2011 Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Peralta,[*] *Leonen,* and *Martires, JJ.,* concur.

Carpio (Chairperson), J., on official leave.

---

[23] *Id.* at 418-419.

[24] *Hantex Trading Co., Inc. v. CA*, 438 Phil. 737, 747 (2002).

[*] Per Special Order No. 2445 dated June 16, 2017.

THIRD DIVISION

[G.R. No. 221717. June 19, 2017]

MANG INASAL PHILIPPINES, INC., *petitioner, vs.* **IFP MANUFACTURING CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (REPUBLIC ACT NO. 82930), SECTION 123.1(d)(iii) THEREOF; CONCEPT OF CONFUSION; A MARK THAT IS SIMILAR TO A REGISTERED MARK OR A MARK WITH AN EARLIER FILING OR PRIORITY DATE AND WHICH IS LIKELY TO CAUSE CONFUSION ON THE PART OF THE PUBLIC CANNOT BE REGISTERED WITH THE INTELLECTUAL PROPERTY OFFICE (IPO); CONFUSION OF GOODS DISTINGUISHED FROM CONFUSION OF BUSINESS.— A mark that is similar to a registered mark or a mark with an earlier filing or priority date (earlier mark) and which is likely to cause confusion on the part of the public cannot be registered with the IPO. Such is the import of Sec. 123.1(d)(iii) of RA 8293 x x x The concept of confusion, which is at the heart of the proscription, could either refer to *confusion of goods* or *confusion of business.* In *Skechers U.S.A., Inc. v. Trendworks International Corporation,* we discussed and differentiated both types of confusion, as follows: Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, viz.: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.

2. ID.; ID.; ID.; ID.; TO BE REGARDED AS LIKELY TO DECEIVE OR CAUSE CONFUSION UPON THE PURCHASING PUBLIC, A PROSPECTIVE MARK MUST NEARLY RESEMBLE OR BE SIMILAR TO AN EARLIER MARK, AND PERTAIN TO GOODS OR SERVICES THAT ARE EITHER IDENTICAL, SIMILAR OR RELATED TO THE GOODS OR SERVICES REPRESENTED BY THE EARLIER MARK.— Confusion, in either of its forms, is, thus, only possible when the goods or services covered by allegedly similar marks are identical, similar or related in some manner. Verily, to fall under the ambit of Sec. 123.1(d)(iii) and be regarded as likely to deceive or cause confusion upon the purchasing public, a prospective mark must be shown to meet two (2) minimum conditions: 1. The prospective mark must nearly resemble or be similar to an earlier mark; *and 2.* The prospective mark must pertain to goods or services that are either identical, similar or related to the goods or services represented by the earlier mark.

3. ID.; ID.; ID.; ID.; TO BE REGARDED AS SIMILAR TO AN EARLIER MARK, IT IS ENOUGH THAT A PROSPECTIVE MARK BE A COLORABLE IMITATION OF THE FORMER.— The first condition of the proscription requires resemblance or *similarity* between a prospective mark and an earlier mark. Similarity does not mean absolute identity of marks. To be regarded as similar to an earlier mark, it is enough that a prospective mark be a colorable imitation of the former. Colorable imitation denotes such likeness in form, content, words, sound, meaning, special arrangement or general appearance of one mark with respect to another as would likely mislead an average buyer in the ordinary course of purchase.

4. ID.; ID.; ID.; ID.; SIMILARITY OR COLORABLE IMITATION; DOMINANCY TEST AND HOLISTIC TEST, DISTINGUISHED.— In determining whether there is similarity or colorable imitation between two marks, authorities employ either the *dominancy test* or the *holistic test.* In *Mighty Corporation v. E. & J. Gallo Winery,* we distinguished between the two tests as follows: The **Dominancy Test** focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement. **If the competing trademark contains the main, essential or dominant features of another, and confusion or deception**

is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or deceive purchasers. On the other hand, the **Holistic Test** requires that the entirety of the marks in question be considered in resolving confusing similarity. Comparison of words is not the only determining factor. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other. There are currently no fixed rules as to which of the two tests can be applied in any given case. However, recent case law on trademark seems to indicate an overwhelming judicial preference towards applying the dominancy test. We conform.

5. ID.; ID.; ID.; ID.; ID.; THE OK HOTDOG INASAL MARK IS A COLORABLE IMITATION OF THE MANG INASAL MARK.— [A]pplying the dominancy test, we hold that the OK Hotdog Inasal mark is a colorable imitation of the Mang Inasal mark. *First.* The fact that the conflicting marks have exactly the same dominant element is key. It is undisputed that the OK Hotdog Inasal mark copied and adopted as one of its dominant features the *"INASAL"* element of the Mang Inasal mark. Given that the *"INASAL"* element is, at the same time, the dominant and most distinctive feature of the Mang Inasal mark, the said element's incorporation in the OK Hotdog Inasal mark, thus, has the *potential* to project the deceptive and false impression that the latter mark is somehow linked or associated with the former mark. *Second.* The differences between the two marks are trumped by the overall impression created by their similarity. The mere fact that there are other elements in the OK Hotdog Inasal mark that are not present in the Mang Inasal mark actually does little to change the probable public perception that both marks are linked or associated. It is worth reiterating that the OK Hotdog Inasal mark actually brandishes a *literal copy* of the most recognizable feature of the Mang Inasal mark. We doubt that an average buyer catching a casual glimpse of the OK Hotdog Inasal mark would pay more attention

to the peripheral details of the said mark than it would to the mark's more prominent feature, especially when the same invokes the distinctive feature of another more popular brand. All in all, we find that the OK Hotdog Inasal mark is similar to the Mang Inasal mark.

6. ID.; ID.; ID.; ID.; RELATED GOODS AND SERVICES; THOSE THAT, THOUGH NON-IDENTICAL OR NON-SIMILAR, ARE SO LOGICALLY CONNECTED TO EACH OTHER THAT THEY MAY REASONABLY BE ASSUMED TO ORIGINATE FROM ONE MANUFACTURER OR FROM ECONOMICALLY-LINKED MANUFACTURERS; FACTORS TO CONSIDER.— The second condition of the proscription requires that the prospective mark pertain to goods or services that are either identical, similar or related to the goods or services represented by the earlier mark. While there can be no quibble that the curl snack product for which the registration of the OK Hotdog Inasal mark is sought cannot be considered as identical or similar to the restaurant services represented by the Mang Inasal mark, there is ample reason to conclude that the said product and services may nonetheless be regarded as *related* to each other. Related goods and services are those that, though non-identical or non-similar, are so logically connected to each other that they may reasonably be assumed to originate from one manufacturer or from economically-linked manufacturers. In determining whether goods or services are related, several factors may be considered. Some of those factors recognized in our jurisprudence are: 1. the business (and its location) to which the goods belong; 2. the class of product to which the goods belong; 3. the product's quality, quantity, or size, including the nature of the package, wrapper or container; 4. the nature and cost of the articles; 5. the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality; 6. the purpose of the goods; 7. whether the article is bought for immediate consumption, that is, day-to-day household items; 8. the fields of manufacture; 9. the conditions under which the article is usually purchased, and 10. the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.

7. ID.; ID.; ID.; ID.; ID.; THE GOODS FOR WHICH THE REGISTRATION OF THE OK HOTDOG INASAL MARK

IS SOUGHT ARE RELATED TO THE SERVICES BEING REPRESENTED BY THE MANG INASAL MARK.— [W]e hold that the curl snack product for which the registration of the OK Hotdog Inasal mark is sought is related to the restaurant services represented by the Mang Inasal mark, in such a way that may lead to a confusion of business. In holding so, we took into account the specific kind of restaurant business that petitioner is engaged in, the reputation of the petitioner's mark, and the particular type of curls sought to be marketed by the respondent x x x. Accordingly, it is the fact that the underlying goods and services of both marks deal with *inasal* and *inasal*-flavored products which ultimately fixes the relations between such goods and services. Given the foregoing circumstances *and* the aforesaid similarity between the marks in controversy, we are convinced that an average buyer who comes across the curls marketed under the OK Hotdog Inasal mark is likely to be confused as to the true source of such curls. To our mind, it is not unlikely that such buyer would be led into the assumption that the curls are of petitioner and that the latter has ventured into snack manufacturing or, if not, that the petitioner has supplied the flavorings for respondent's product. Either way, the reputation of petitioner would be taken advantage of and placed at the mercy of respondent. All in all, we find that the goods for which the registration of the OK Hotdog Inasal mark is sought are related to the services being represented by the Mang Inasal mark.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Estrellita Beltran-Abelardo for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court of the Resolutions dated June 10, 2015[1]

[1] *Rollo*, pp. 854-857. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Victoria Isabel A. Paredes and Zenaida T. Galapate-Laguilles.

and December 2, 2015[2] of the Court of Appeals (CA) in CA-G.R. SP No. 139020.

The Facts

The Trademark Application and the Opposition

Respondent IFP Manufacturing Corporation is a local manufacturer of snacks and beverages.

On May 26, 2011, respondent filed with the Intellectual Property Office (IPO) an application[3] for the registration of the mark "**OK Hotdog Inasal Cheese Hotdog Flavor Mark**" (OK Hotdog Inasal mark) in connection with goods under Class 30 of the Nice Classification.[4] The said mark, which respondent intends to use on one of its curl snack products, appears as follows:

The application of respondent was opposed[5] by petitioner Mang Inasal Philippines, Inc.

Petitioner is a domestic fast food company and the owner of the mark "**Mang Inasal, Home of Real Pinoy Style Barbeque**

---

[2] *Id*. at 55-58.

[3] Trademark Application No. 4-2011-006098. The application was published in the IPO E-Gazette on July 16, 2012.

[4] Otherwise known as the "International Classification of Goods."

[5] *Rollo*, pp. 65-76. Via Notice of Opposition dated October 15, 2012. The Notice of Opposition was docketed in the IPO as IPC No. 14-2012-00369.

and Device" (Mang Inasal mark) for services under Class 43 of the Nice Classification.[6] The said mark, which was registered with the IPO in 2006[7] and had been used by petitioner for its chain of restaurants since 2003,[8] consists of the following insignia:

Petitioner, in its opposition, contended that the registration of respondent's OK Hotdog Inasal mark is prohibited under Section 123.1(d)(iii) of Republic Act No. (RA) 8293.[9] Petitioner averred that the OK Hotdog Inasal mark and the Mang Inasal mark share similarities—both as to their appearance and as to the goods or services that they represent—which tend to suggest

---

[6] Per Certificate of Registration No. 4-2006-009050.

[7] *Rollo*, p. 122. The Mang Inasal mark was registered with the IPO on August 17, 2006. *See* Certificate of Registration No. 4-2006-009050,

[8] *Id*. at 25.

[9] The provision reads:

SECTION 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:

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.

a false connection or association between the said marks and, in that regard, would likely cause confusion on the part of the public.[10] As petitioner explained:

1. The OK Hotdog Inasal mark is similar to the Mang Inasal mark. Both marks feature the same dominant element—i.e., the word "*INASAL*"—printed and stylized in the exact same manner, viz:
    a. In both marks, the word "*INASAL*" is spelled using the same font style and red color;
    b. In both marks, the word "*INASAL*" is placed inside the same black outline and yellow background; and
    c. In both marks, the word "*INASAL*" is arranged in the same staggered format.
2. The goods that the OK Hotdog Inasal mark is intended to identify (i.e., curl snack products) are also closely related to the services represented by the Mang Inasal mark (i.e., fast food restaurants). Both marks cover *inasal* or *inasal*-flavored food products.

Petitioner's opposition was referred to the Bureau of Legal Affairs (BLA) of the IPO for hearing and disposition.

Decisions of the IPO-BLA and the IPO-DG

On September 19, 2013, after due proceedings, the IPO-BLA issued a Decision[11] dismissing petitioner's opposition. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper [sic] of Trademark Application Serial No. 4-2011-006098 be returned, together with a copy of this Decision, to the Bureau of Trademarks for further information and appropriate action.
>
> **SO ORDERED**.

---

[10] *Rollo*, pp. 65-76.

[11] *Id*. at 203-207.

Aggrieved, petitioner appealed the Decision of IPO-BLA to the Director General (DG) of the IPO.[12]

On December 15, 2014, the IPO-DG rendered a Decision[13] dismissing the appeal of petitioner. The *fallo* of the Decision accordingly reads:

> Wherefore, premises considered, the appeal is hereby dismissed. Let a copy of this Decision be furnished to the Director of Bureau of Legal Affairs and the Director of Bureau of Trademarks for their appropriate action and information. Further, let a copy of this Decision be furnished to the library of the Documentation, Information and Technology Transfer Bureau for records purposes.
>
> SO ORDERED.

Both the IPO-BLA and the IPO-DG were not convinced that the OK Hotdog Inasal mark is confusingly similar to the Mang Inasal mark. They rebuffed petitioner's contention, thusly:

1. The OK Hotdog Inasal mark is not similar to the Mang Inasal mark. In terms of appearance, the only similarity between the two marks is the word "*INASAL*." However, there are other words like "*OK*," "*HOTDOG*," and "*CHEESE*" and images like that of curls and cheese that are found in the OK Hotdog Inasal mark but are not present in the Mang Inasal mark.[14]

   In addition, petitioner cannot prevent the application of the word "*INASAL*" in the OK Hotdog Inasal mark. No person or entity can claim exclusive right to use the word "*INASAL*" because it is merely a generic or descriptive word that means barbeque or barbeque products.[15]

2. Neither can the underlying goods and services of the two marks be considered as closely related. The products

---

[12] The appeal was docketed as Appeal No. 14-2013-0052.

[13] *Rollo*, pp. 408-411. Rendered by then Director General Ricardo R. Blancaflor.

[14] *Id*. at 410.

[15] *Id*. at 410-411.

> represented by the two marks are not competitive and are sold in different channels of trade. The curl snack products of the OK Hotdog Inasal mark are sold in *sari-sari* stores, grocery stores and other small distributor outlets, whereas the food products associated with the Mang Inasal mark are sold in petitioner's restaurants.[16]

Undeterred, petitioner appealed to the CA.

Resolutions of the CA and the Instant Appeal

On June 10, 2015, the CA issued a Resolution[17] denying the appeal of petitioner. Petitioner filed a motion for reconsideration, but this too was denied by the CA through its Resolution[18] dated December 2, 2015. The CA, in its Resolutions, simply agreed with the ratiocinations of the IPO-BLA and IPO-DG.

Hence, the instant appeal.

Here, petitioner prays for the reversal of the CA Resolutions. Petitioner maintains that the OK Hotdog Inasal mark is confusingly similar to the Mang Inasal mark and insists that the trademark application of respondent ought to be denied for that reason.

Our Ruling

We have examined the OK Hotdog Inasal and Mang Inasal marks under the lens of pertinent law and jurisprudence. And, through it, we have determined the justness of petitioner's claim. By our legal and jurisprudential standards, the respondent's OK Hotdog Inasal mark is, indeed, likely to cause deception or confusion on the part of the public. Hence, contrary to what the IPO-BLA, IPO-DG, and the CA had ruled, the respondent's application should have been denied.

We, therefore, grant the appeal.

---

[16] *Id*. at 206-207; 411.

[17] *Id*. at 854-857.

[18] *Id*. at 55-58.

I

The Proscription: Sec. 123.1(d)(iii) of RA 8293

A mark that is similar to a registered mark or a mark with an earlier filing or priority date (earlier mark) and which is likely to cause confusion on the part of the public cannot be registered with the IPO. Such is the import of Sec. 123.1(d)(iii) of RA 8293:

> **SECTION 123**. *Registrability*. —
>
> 123.1. A mark cannot be registered if it:
>
> x x x x x x x x x
>
> d. x x x:
>
> i. x x x
> ii. x x x
> iii. ...nearly resembles [a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date] as to be likely to deceive or cause confusion.

The concept of confusion, which is at the heart of the proscription, could either refer to *confusion of goods* or *confusion of business*. In *Skechers U.S.A., Inc. v. Trendworks International Corporation*,[19] we discussed and differentiated both types of confusion, as follows:

> Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, viz.: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.

---

[19] G.R. No. 164321, March 23, 2011, 646 SCRA 448.

Confusion, in either of its forms, is, thus, only possible when the goods or services covered by allegedly similar marks are identical, similar or related in some manner.[20]

Verily, to fall under the ambit of Sec. 123.1(d)(iii) and be regarded as likely to deceive or cause confusion upon the purchasing public, a prospective mark must be shown to meet two (2) minimum conditions:

1. The prospective mark must nearly resemble or be similar to an earlier mark; *and*
2. The prospective mark must pertain to goods or services that are either identical, similar or related to the goods or services represented by the earlier mark.

The rulings of the IPO-BLA, IPO-DG, and the CA all rest on the notion that the OK Hotdog Inasal mark does *not* fulfill both conditions and so may be granted registration.

We disagree.

II

The OK Hotdog Inasal Mark Is Similar to the Mang Inasal Mark

The first condition of the proscription requires resemblance or *similarity* between a prospective mark and an earlier mark. Similarity does not mean absolute identity of marks.[21] To be regarded as similar to an earlier mark, it is enough that a prospective mark be a colorable imitation of the former.[22] Colorable imitation denotes such likeness in form, content, words, sound, meaning, special arrangement or general appearance of one mark with respect to another as would likely mislead an average buyer in the ordinary course of purchase.[23]

---

[20] See *Faberge, Inc. v. Intermediate Appellate Court*, G.R. No. 71189, November 4, 1992, 215 SCRA 316.

[21] See *Emerald Garment Manufacturing v. Court of Appeals*, G.R. No. 100098, December 29, 1995, 251 SCRA 600.

[22] *Clark v. Manila Candy Company*, 36 Phil. 100 (1917).

[23] *Emerald Garment Manufacturing*, *supra* note 21.

In determining whether there is similarity or colorable imitation between two marks, authorities employ either the *dominancy test* or the *holistic test*.[24] In *Mighty Corporation v. E. & J. Gallo Winery*,[25] we distinguished between the two tests as follows:

> The **Dominancy Test** focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement. **If the competing trademark contains the main, essential or dominant features of another, and confusion or deception is likely to result, infringement takes place**. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or deceive purchasers.
>
> On the other hand, the **Holistic Test** requires that the entirety of the marks in question be considered in resolving confusing similarity. Comparison of words is not the only determining factor. The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other. (citations omitted and emphasis supplied)

There are currently no fixed rules as to which of the two tests can be applied in any given case.[26] However, recent case law on trademark seems to indicate an overwhelming judicial preference towards applying the dominancy test.[27] We conform.

---

[24] *Mighty Corporation v. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473.

[25] *Id*.

[26] See *Diaz v. People of the Philippines*, G.R. No. 180677, February 18, 2013, 691 SCRA 139.

[27] See *UFC Philippines, Inc. v. Fiesta Barrio Manufacturing Corporation*, G.R. No. 198889, January 20, 2016; *Skechers U.S.A., Inc.*, *supra* note 19; *Berris Agricultural Company, Inc. v. Abyadang*, G.R. No. 183404, October 13, 2010, 633 SCRA 196; *Dermaline, Inc. v. Myra Pharmaceuticals*,

Our examination of the marks in controversy yielded the following findings:

1. The petitioner's Mang Inasal mark has a single dominant feature—the word "*INASAL*" written in a bold red typeface against a black outline and yellow background with staggered design. The other perceptible elements of the mark—such as the word "*MANG*" written in black colored font at the upper left side of the mark and the phrase "*HOME OF REAL PINOY STYLE BARBEQUE*" written in a black colored stylized font at the lower portion of the mark—are not as visually outstanding as the mentioned feature.

2. **Being the sole dominant element, the word "*INASAL,*" as stylized in the Mang Inasal mark, is also the most distinctive and recognizable feature of the said mark**.

3. **The dominant element "*INASAL,*" as stylized in the Mang Inasal mark, is different from the term "*inasal*" *per se*. The term "*inasal*" *per se* is a descriptive term that cannot be appropriated. However, the dominant element "*INASAL,*" as stylized in the Mang Inasal mark, is not. Petitioner, as the registered owner of the Mang Inasal mark, can claim exclusive use of such element**.

4. The respondent's OK Hotdog Inasal mark, on the other hand, has three (3) dominant features: (a) the word "*INASAL*" written in a bold red typeface against a black and yellow outline with staggered design; (b) the word "*HOTDOG*" written in green colored font; and (c) a picture of three pieces of curls. Though there are other observable elements in the mark—such as the word "*OK*" written in red colored font at the upper left side of the mark, the small red banner overlaying the picture of

---

G.R. No. 190065, August 16, 2010, 628 SCRA 356; *Societe Des Produits Nestlé, S.A. v. Dy, Jr.*, G.R. No. 172276, August 8, 2010, 627 SCRA 223; *Prosource International, Inc. v. Horphag Research Management SA*, G.R. No. 180073, November 25, 2009, 605 SCRA 523.

the curls with the words "*CHEESE HOTDOG FLAVOR*" written on it, and the image of a block of cheese beside the picture of the curls—none of those are as prevalent as the two features aforementioned.

5. **The dominant element "*INASAL*" in the OK Hotdog Inasal mark is exactly the same as the dominant element "*INASAL*" in the Mang Inasal mark. Both elements in both marks are printed using the exact same red colored font, against the exact same black outline and yellow background and is arranged in the exact same staggered format**.

6. Apart from the element "*INASAL*," there appear no other perceivable similarities between the two marks.

Given the foregoing premises, and applying the dominancy test, we hold that the OK Hotdog Inasal mark is a colorable imitation of the Mang Inasal mark.

First. The fact that the conflicting marks have exactly the same dominant element is key. It is undisputed that the OK Hotdog Inasal mark copied and adopted as one of its dominant features the "*INASAL*" element of the Mang Inasal mark. Given that the "*INASAL*" element is, at the same time, the dominant and most distinctive feature of the Mang Inasal mark, the said element's incorporation in the OK Hotdog Inasal mark, thus, has the *potential* to project the deceptive and false impression that the latter mark is somehow linked or associated with the former mark.

Second. The differences between the two marks are trumped by the overall impression created by their similarity. The mere fact that there are other elements in the OK Hotdog Inasal mark that are not present in the Mang Inasal mark actually does little to change the probable public perception that both marks are linked or associated. It is worth reiterating that the OK Hotdog Inasal mark actually brandishes a *literal copy* of the most recognizable feature of the Mang Inasal mark. We doubt that an average buyer catching a casual glimpse of the OK Hotdog Inasal mark would pay more attention to the peripheral details

of the said mark than it would to the mark's more prominent feature, especially when the same invokes the distinctive feature of another more popular brand.

All in all, we find that the OK Hotdog Inasal mark is similar to the Mang Inasal mark.

III

The Goods for which the Registration of the OK Hotdog Inasal Mark Is Sought Are Related to the Services Being Represented by the Mang Inasal Mark

The second condition of the proscription requires that the prospective mark pertain to goods or services that are either identical, similar or related to the goods or services represented by the earlier mark. While there can be no quibble that the curl snack product for which the registration of the OK Hotdog Inasal mark is sought cannot be considered as identical or similar to the restaurant services represented by the Mang Inasal mark, there is ample reason to conclude that the said product and services may nonetheless be regarded as *related* to each other.

Related goods and services are those that, though non-identical or non-similar, are so logically connected to each other that they may reasonably be assumed to originate from one manufacturer or from economically-linked manufacturers.[28] In determining whether goods or services are related, several factors may be considered. Some of those factors recognized in our jurisprudence are:[29]

1. the business (and its location) to which the goods belong;
2. the class of product to which the goods belong;
3. the product's quality, quantity, or size, including the nature of the package, wrapper or container;
4. the nature and cost of the articles;

---

[28] See *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, No. L-19906, April 30, 1969, 27 SCRA 1214.

[29] *Mighty Corporation*, *supra* note 24.

5. the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality;
6. the purpose of the goods;
7. whether the article is bought for immediate consumption, that is, day-to-day household items;
8. the fields of manufacture;
9. the conditions under which the article is usually purchased, and
10. the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold.

Relative to the consideration of the foregoing factors, however, *Mighty Corporation*[30] significantly imparted:

> The wisdom of this approach is its recognition that each trademark infringement case presents its own unique set of facts. No single factor is preeminent, nor can the presence or absence of one determine, without analysis of the others, the outcome of an infringement suit. Rather, the court is required to sift the evidence relevant to each of the criteria. This requires that the entire panoply of elements constituting the relevant factual landscape be comprehensively examined. It is a weighing and balancing process. With reference to this ultimate question, and from a balancing of the determinations reached on all of the factors, a conclusion is reached whether the parties have a right to the relief sought.
>
> **A very important circumstance though is whether there exists a likelihood that an appreciable number of ordinarily prudent purchasers will be misled, or simply confused, as to the source of the goods in question**. The "purchaser" is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved he is accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that

[30] *Id*.

design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. **The simulation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase**. (citations omitted and emphasis supplied)

Mindful of the foregoing precepts, we hold that the curl snack product for which the registration of the OK Hotdog Inasal mark is sought is related to the restaurant services represented by the Mang Inasal mark, in such a way that may lead to a confusion of business. In holding so, we took into account the specific kind of restaurant business that petitioner is engaged in, the reputation of the petitioner's mark, and the particular type of curls sought to be marketed by the respondent, thus:

First. Petitioner uses the Mang Inasal mark in connection with its restaurant services that is particularly known for its chicken *inasal*, i.e., grilled chicken doused in a special *inasal* marinade.[31] The *inasal* marinade is different from the typical barbeque marinade and it is what gives the chicken inasal its unique taste and distinct orange color.[32] *Inasal* refers to the manner of grilling meat products using an *inasal* marinade.

Second. The Mang Inasal mark has been used for petitioner's restaurant business since 2003. The restaurant started in Iloilo but has since expanded its business throughout the country. Currently, the Mang Inasal chain of restaurants has a total of 464 branches scattered throughout the nation's three major islands.[33] It is, thus, fair to say that a sizeable portion of the population is knowledgeable of the Mang Inasal mark.

---

[31] *Rollo*, p. 25.

[32] Gapultos, Marvin, *The Adobo Road Cookbook: A Filipino Food Journey from Food Blog, to Food Truck and Beyond* (2013), p. 84.

[33] *Rollo*, p. 25.

Third. Respondent, on the other hand, seeks to market under the OK Hotdog Inasal mark curl snack products which it publicizes as having a cheese hotdog *inasal* flavor.[34]

Accordingly, it is the fact that the underlying goods and services of both marks deal with *inasal* and *inasal*-flavored products which ultimately fixes the relations between such goods and services. Given the foregoing circumstances *and* the aforesaid similarity between the marks in controversy, we are convinced that an average buyer who comes across the curls marketed under the OK Hotdog Inasal mark is likely to be confused as to the true source of such curls. To our mind, it is not unlikely that such buyer would be led into the assumption that the curls are of petitioner and that the latter has ventured into snack manufacturing or, if not, that the petitioner has supplied the flavorings for respondent's product. Either way, the reputation of petitioner would be taken advantage of and placed at the mercy of respondent.

All in all, we find that the goods for which the registration of the OK Hotdog Inasal mark is sought are related to the services being represented by the Mang Inasal mark.

IV

Conclusion

The OK Hotdog Inasal mark meets the two conditions of the proscription under Sec. 123.1(d)(iii) of RA 8293. *First*, it is similar to the Mang Inasal mark, an earlier mark. *Second*, it pertains to goods that are related to the services represented by such earlier mark. Petitioner was, therefore, correct; and the IPO-BLA, IPO-DG, and the CA's rulings must be reversed. The OK Hotdog Inasal mark is not entitled to be registered as its use will likely deceive or cause confusion on the part of the public and, thus, also likely to infringe the Mang Inasal mark. The law, in instances such as this, must come to the succor of the owner of the earlier mark.

---

[34] *Id*. at 39-40.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. We hereby render a decision as follows:

1. **REVERSING** and **SETTING ASIDE** the Resolutions dated June 10, 2015 and December 2, 2015 of the Court of Appeals in CA-G.R. SP No. 139020;
2. **SETTING ASIDE** the Decision dated December 15, 2014 of the Director General of the Intellectual Property Office in Appeal No. 14-2013-0052;
3. **SETTING ASIDE** the Decision dated September 19, 2013 of the Director of the Bureau of Legal Affairs of the Intellectual Property Office in IPC No. 14-2012-00369; and
4. **DIRECTING** the incumbent Director General and Director of the Bureau of Legal Affairs of the Intellectual Property Office to **DENY** respondent's Application No. 4-2011-006098 for the registration of the mark "**OK Hotdog Inasal Cheese Hotdog Flavor Mark**."

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 227005. June 19, 2017]

BDO UNIBANK, INC., *petitioner, vs.* **ENGR. SELWYN LAO, doing business under the name and style "SELWYN F. LAO CONSTRUCTION" AND "WING AN CONSTRUCTION AND DEVELOPMENT CORPORATION" and INTERNATIONAL EXCHANGE BANK (now UNION BANK OF THE PHILIPPINES),** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; SEQUENCE OF RECOVERY IN CASES OF UNAUTHORIZED PAYMENT OF CHECKS; IN CASES OF UNAUTHORIZED PAYMENT OF CHECKS TO A PERSON OTHER THAN THE PAYEE NAMED THEREIN, THE DRAWEE BANK MAY BE HELD LIABLE TO THE DRAWER, AND THE DRAWEE BANK, IN TURN, MAY SEEK REIMBURSEMENT FROM THE COLLECTING BANK FOR THE AMOUNT OF THE CHECK; BASIS THEREOF.— The Court agrees with the appellate court that in cases of unauthorized payment of checks to a person other than the payee named therein, the drawee bank may be held liable to the drawer. The drawee bank, in turn, may seek reimbursement from the collecting bank for the amount of the check. This rule on the sequence of recovery in case of unauthorized check transactions had already been deeply embedded in jurisprudence. The liability of the drawee bank is based on its contract with the drawer and its duty to charge to the latter's accounts only those payables authorized by him. A drawee bank is under strict liability to pay the check only to the payee or to the payee's order. When the drawee bank pays a person other than the payee named in the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items. On the other hand, the liability of the collecting bank is anchored on its guarantees as the last endorser of the check. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting."

2. ID.; ID.; ID.; IN CHECK TRANSACTIONS, THE COLLECTING BANK GENERALLY SUFFERS THE LOSS BECAUSE IT HAS THE DUTY TO ASCERTAIN THE GENUINENESS OF ALL PRIOR ENDORSEMENTS CONSIDERING THAT THE ACT OF PRESENTING THE CHECK FOR PAYMENT TO THE DRAWEE IS AN ASSERTION THAT THE PARTY MAKING THE PRESENTMENT HAS DONE ITS DUTY TO ASCERTAIN THE GENUINENESS OF THE ENDORSEMENTS; IF ANY

OF THE WARRANTIES MADE BY THE COLLECTING BANK TURNS OUT TO BE FALSE, THEN THE DRAWEE BANK MAY RECOVER FROM IT UP TO THE AMOUNT OF THE CHECK.— It has been repeatedly held that in check transactions, the collecting bank generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. If any of the warranties made by the collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check. In the present case, BDO paid the value of Check No. 0127-242250 to Union Bank, which, in turn, credited the amount to New Wave's account. The payment by BDO was in violation of Lao's instruction because the same was not issued in favor of Everlink, the payee named in the check. It must be pointed out that the subject check was not even endorsed by Everlink to New Wave. Clearly, BDO violated its duty to charge to Lao's account only those payables authorized by him. Nevertheless, even with such clear violation by BDO of its duty, the loss would have ultimately pertained to Union Bank. By stamping at the back of the subject check the phrase "all prior endorsements and/or lack of it guaranteed," Union Bank had, for all intents and purposes treated the check as a negotiable instrument and, accordingly, assumed the warranty of an endorser. Without such warranty, BDO would not have paid the proceeds of the check. Thus, Union Bank cannot now deny liability after the aforesaid warranty turned out to be false.

3. ID.; ID.; ID.; CROSSED CHECK; ONE WHERE TWO PARALLEL LINES ARE DRAWN ACROSS ITS FACE OR ACROSS THE CORNER THEREOF; EFFECTS OF CROSSING A CHECK. — Union Bank was clearly negligent when it allowed the check to be presented by, and deposited in the account of New Wave, despite knowledge that it was not the payee named therein. Further, it could not have escaped its attention that the subject checks were crossed checks. A crossed check is one where two parallel lines are drawn across its face or across the comer thereof. A check may be crossed generally or specially. A check is crossed especially when the name of a particular banker or company is written between the parallel lines drawn. It is crossed generally when only the words "and

company" are written at all between the parallellines. Jurisprudence dictates that the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once - to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose. The effects of crossing a check, thus, relate to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein.

4. **ID.; ID.; ID.; THE AGGRIEVED PARTY MAY BE ALLOWED TO RECOVER DIRECTLY FROM THE PERSON WHICH CAUSED THE LOSS WHEN CIRCUMSTANCES WARRANT.—** It is undisputed that Check No. 0127-242250 had been crossed generally as nothing was written between the parallel lines appearing on the face of the instrument. This indicated that Lao, the drawer, had intended the same for deposit only to the account of Everlink, the payee named therein. Despite this clear intention, however, Union Bank negligently allowed the deposit of the proceeds of the said check in the account of New Wave. Generally, BDO must be ordered to pay Lao the value of the subject check; whereas, Union Bank would be ordered to reimburse BDO the amount of the check. The aforesaid sequence of recovery, however, is not applicable in the present case due to the presence of certain factual peculiarities. — Although the rule on the sequence of recovery has been deeply engrained in jurisprudence, there may be exceptional circumstances which would justify its simplification. Stated differently, the aggrieved party may be allowed to recover directly from the person which caused the loss when circumstances warrant.

5. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A PARTY COULD NOT BE PREJUDICED OR ADVERSELY AFFECTED BY THE DECISION RENDERED IN THE APPEAL WHERE THE SAME WAS NOT MADE A PARTY IN THE APPEAL, FOR A CONTRARY FINDING WOULD VIOLATE THE PARTY'S CONSTITUTIONAL RIGHT TO DUE PROCESS.—** It has been held that it is not the caption of the pleading, but the

allegations therein that are controlling. The non-inclusion of a party in the title of the pleading is not fatal to the case, provided there is a statement in the body indicating that such non-included person is a party to the case. BDO was not impleaded as a party in Union Bank's appeal before the CA. This is evident from the title of the case before the CA, and the respective briefs of Union Bank and Lao, which mentioned only Lao and Union Bank as parties thereto. Moreover, in their respective briefs before the appellate court, neither Lao nor Union Bank made any statement or raised any issue on BDO's liability and its inclusion as a party in the appeal. Consequently, because of Lao and Union Bank's failure to appeal the July 9, 2012 Decision of the RTC with respect to BDO's lack of liability, said decision became final as to the latter. The finality of the July 9, 2012 RTC Decision as to BDO, which absolved it from any liability, necessarily means that it could not be prejudiced or adversely affected by the decision rendered in the appeal. It is elementary in this jurisdiction that a person cannot be bound by a decision wherein it was not a party. A contrary finding would violate BDO's constitutional right to due process. Needless to state, the appellate court erred in ordering BDO to pay the amount of the subject check because the latter was not made a party in the appeal, and the issue as to its liability or lack thereof, was not raised on appeal.

6. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; RECOVERY IN CASES OF UNAUTHORIZED PAYMENT OF CHECKS; SIMPLIFICATION OF THE RECOVERY PROCEEDINGS APPLICABLE TO CASE AT BAR; THE DRAWER WHOSE CHECK WAS PAID WITHOUT AUTHORITY TO A PERSON OTHER THAN THE PAYEE NAMED THEREIN SHOULD BE ALLOWED TO RECOVER DIRECTLY FROM THE COLLECTING BANK, WHERE THE DRAWEE BANK WHICH SHOULD HAD BEEN DIRECTLY LIABLE TO THE DRAWER WAS NOT MADE A PARTY IN THE PROCEEDINGS IN COURT.— [T]he Court is of the considered view that the pronouncements made in *Associated Bank* as regards the simplification of the recovery proceedings are applicable in the present case. x x x. Lao, the drawer of the subject check, has a right of action against BDO for its failure to comply with its duty as the drawee bank. BDO, in turn, would have a right of action against Union Bank because of the falsity of its

warranties as the collecting bank. Considering, however, that BDO was not made a party in the appeal, it could no longer be held liable to Lao. Thus, following *Associated Bank*, the proceedings for recovery must be simplified and Lao should be allowed to recover directly from Union Bank.

APPEARANCES OF COUNSEL

BDO Unibank, Inc. Legal Services Group for petitioner BDO Unibank, Inc.

Cacho & Chua Law Offices for respondent Selwyn Lao.

Office of the General Counsel for respondent Union Bank of the Philippines.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the October 14, 2015 Decision[1] and the September 5, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 100351, which affirmed, with modification, the July 9, 2012 Decision[3] of the Regional Trial Court, Branch 55, Manila *(RTC)* in Civil Case No. 99-93068, a case for collection of sum of money.

The Antecedents

On March 9, 1999, respondent Engineer Selwyn S. Lao *(Lao)* filed before the RTC a complaint for collection of sum of money against Equitable Banking Corporation, now petitioner Banco de Oro Unibank (*BDO*), Everlink Pacific Ventures, Inc. (*Everlink*), and Wu Hsieh a.k.a. George Wu *(Wu)*.

---

[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justice Mariflor P. Punzalan Castillo, and Associate Justice Leoncia R. Dimagiba, concurring; *rollo*, pp. 36-48.

[2] *Id*. at 50-54.

[3] Penned by Presiding Judge Josefina E. Siscar; *id*. at 61-76.

In his complaint, Lao alleged that he was doing business under the name and style of "Selwyn Lao Construction"; that he was a majority stockholder of Wing An Construction and Development Corporation *(Wing An)*; that he entered into a transaction with Everlink, through its authorized representative Wu, under which, Everlink would supply him with "HCG sanitary wares"; and that for the down payment, he issued two (2) Equitable crossed checks payable to Everlink: Check No. 0127-242249[4] and Check No. 0127-242250,[5] in the amounts of ₱273,300.00 and ₱336,500.00, respectively.

Lao further averred that when the checks were encashed, he contacted Everlink for the immediate delivery of the sanitary wares, but the latter failed to perform its obligation. Later, Lao learned that the checks were deposited in two different bank accounts at respondent International Exchange Bank, now respondent Union Bank of the Philippines *(Union Bank)*. He was later informed that the two bank accounts belonged to Wu and a company named New Wave Plastic *(New Wave)*, represented by a certain Willy Antiporda *(Antiporda)*. Consequently, Lao was prompted to file a complaint against Everlink and Wu for their failure to comply with their obligation and against BDO for allowing the encashment of the two (2) checks. He later withdrew his complaint against Everlink as the corporation had ceased existing.

In its answer, BDO asserted that it had no obligation to ascertain the owner of the account/s to which the checks were deposited because the instruction to deposit the said checks to the payee's account only was directed to the payee and the collecting bank, which in this case was Union Bank; that as the drawee bank, its obligations consist in examining the genuineness of the signatures appearing on the checks, and paying the same if there were sufficient funds in the account under which the checks were drawn; and that the subject checks were

---

[4] Records, p. 104.

[5] *Id*.

properly negotiated and paid in accordance with the instruction of Lao in crossing them as they were deposited to the account of the payee Everlink with Union Bank, which then presented them for payment with BDO.

On August 24, 2001, Lao filed an Amended Complaint, wherein he impleaded Union Bank as additional defendant for allowing the deposit of the crossed checks in two bank accounts other than the payee's, in violation of its obligation to deposit the same only to the payee's account.

In its answer, Union Bank argued that Check No. 0127-242249 was deposited in the account of Everlink; that Check No. 0127-242250 was validly negotiated by Everlink to New Wave; that Check No. 0127-242250 was presented for payment to BDO, and the proceeds thereof were credited to New Wave's account; that it was under no obligation to deposit the checks only in the account of Everlink because there was nothing on the checks which would indicate such restriction; and that a crossed check continues to be negotiable, the only limitation being that it should be presented for payment by a bank.

During trial, BDO presented as its witnesses Elizabeth P. Tinimbang (*Tinimbang*) and Atty. Carlos Buenaventura (*Atty. Buenaventura*).

Tinimbang testified that Everlink was the payee of the two (2) crossed checks issued by their client, Wing An; that the checks were deposited with Union Bank, which presented them to BDO for payment. She further narrated that after the checks were cleared and that the drawer's signatures on the checks were determined to be genuine, that there was sufficient fund to cover the amounts of the checks, and that there was no order to stop payment, the checks were paid by BDO. Tinimbang continued that sometime in July 1998, BDO received a letter from Wing An stating that the amounts of the checks were not credited to Everlink's account. This prompted BDO to write a letter to Union Bank demanding the latter to refund the amounts of the checks. In a letter-reply, Union Bank claimed that the checks were deposited in the account of Everlink.

Atty. Buenaventura claimed that BDO gave credence to Union Bank's representation that the checks were indeed credited to the account of Everlink. He stated that BDO's only obligations under the circumstances were to ascertain the genuineness of the checks, to determine if the account was sufficiently funded and to credit the proceeds to the collecting bank. On cross-examination, Atty. Buenaventura clarified that Union Bank endorsed the crossed checks as could be seen on the dorsal portion of the subject checks. According to him, such endorsement meant that the lack of prior endorsement was guaranteed by Union Bank.

For its part, Union Bank presented as its witness Jojina Lourdes C. Vega (*Vega*), its Branch Business Manager. Vega testified that the transaction history of Everlink's account with Union Bank and the notation at the back of the check indicating Everlink's Account No. (005030000925) revealed that the proceeds of Check No. 0127-242249 were duly credited to Everlink's account on September 22, 1997. As regards Check No. 0127-242250, Vega clarified that the proceeds of the same were credited to New Wave's account. She explained that New Wave was a valued client of Union Bank. As a form of accommodation extended to valued clients, Union Bank would request the signing of a second endorsement agreement because the payee was not the same as the account holder. In this case, Antiporda executed a Deed of Undertaking (Second Endorsed Checks) wherein he assumed the responsibilities for the correctness, genuineness, and validity of the subject checks.

The RTC Ruling

In its Decision, dated July 9, 2012, the RTC absolved BDO from any liability, but ordered Union Bank to pay Lao the amount of ₱336,500.00, representing the value of Check No. 0127-242250; ₱50,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees.

The RTC observed that there was nothing irregular with the transaction of Check No. 0127-242249 because the same was deposited in Everlink's account with Union Bank. It, however,

found that Check No. 0127-242250 was irregularly deposited and encashed because it was not issued for the account of Everlink, the payee, but for the account of New Wave. The trial court noted further that Check No. 0127-242250 was not even endorsed by Everlink to New Wave. Thus, it opined that Union Bank was negligent in allowing the deposit and encashment of the said check without proper endorsement. The RTC wrote that considering that the subject check was a crossed check, Union Bank failed to take reasonable steps in order to determine the validity of the representations made by Antiporda. In the end, it adjudged that BDO could not be held liable because of Union Bank's warranty when it stamped on the check that "all prior endorsement and/or lack of endorsement guaranteed." The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in **FAVOR** of the plaintiff Engr. Selwyn F. Lao and **AGAINST** the defendant International Exchange Bank (now Union Bank) ordering the latter to pay the former the following:
>
> 1. The amount of Three Hundred Thirty Six Thousand Five Hundred Pesos (₱336,500.00) representing the Equitable Bank Check No. 0127-242250;
> 2. The amount of Fifty Thousand Pesos (₱50,000.00) representing moral damages;
> 3. The amount of One Hundred Thousand Pesos (₱100,000.00) representing exemplary damages; and,
> 4. The amount of Fifty Thousand Pesos (₱50,000.00) as attorney's fees.
>
> The Complaints against defendants Equitable Banking Corporation (now Banco de Oro) and Wu Shu Chien a.k.a. George Wu are hereby ordered **DISMISSED.**
>
> Costs against the defendant International and Exchange Bank (now Union Bank).
>
> SO ORDERED.[6]

---

[6] *Id*. at 828.

Aggrieved, Union Bank elevated an appeal to the CA.[7]

The CA Ruling

In its assailed Decision, dated October 14, 2015, the CA affirmed, with modification, the ruling of the RTC. It ordered BDO to pay Lao the amount of ₱336,500.00, with legal interest from the time of filing of the complaint until its full satisfaction. The appellate court further directed Union Bank to reimburse BDO the aforementioned amount. It concurred with the RTC that Union Bank was liable because of its negligence and its guarantee on the validity of all prior endorsements or lack of it.

With regard to BDO's liability, the CA explained that it violated its duty to charge to the drawer's account only those authorized by the latter when it paid the value of Check No. 0127-242250. Thus, it held that BDO was liable for the amount charged to the drawer's account. The *fallo* reads:

> **FOR THESE REASONS**, the appeal is **PARTLY GRANTED**. The July 9, 2012 Decision of the Regional Trial Court of Manila, Branch 55 is **AFFIRMED** with **MODIFICATIONS** that Equitable Bank is ordered to pay Selwyn Lao the amount corresponding to Check No. 0127-242250, i.e., ₱336,500.00, with legal interest from the time of filing of the complaint until the amount is fully paid. International Exchange Bank (now Union Bank of the Philippines) is ordered to reimburse Equitable Bank the abovementioned amount. The award of damages and attorney's fees is **DELETED**. The rest of the Decision stands.
>
> SO ORDERED.[8]

On November 5, 2012, BDO filed its Motion for Partial Reconsideration. It argued that neither Lao nor Union Bank appealed the dismissal of the complaint against it, thus, the RTC decision had already attained finality as far as it was concerned. It also prayed that Lao should be allowed to recover directly from Union Bank.

---

[7] *Id*. at 833.

[8] *Rollo*, pp. 47-48.

In its assailed Resolution, dated September 6, 2016, the CA denied BDO's Motion for Partial Reconsideration. It ratiocinated that in *Bank of America, NT & SA v. Associated Citizens Bank,*[9] *(Bank of America)* the drawee bank was adjudged liable for the amount charged to the drawer's account, while the collecting bank was ordered to reimburse the drawee bank whatever amount the latter was made to pay.

Hence, this petition anchored on the following:

GROUNDS

I.

ISSUES NOT RAISED BY THE PARTIES ON APPEAL CANNOT BE REVIEWED NOR RULED UPON BY THE APPELLATE COURT.

II.

A COLLECTING BANK ASSUMES RESPONSIBILITY FOR A CROSSED CHECK AS A GENERAL ENDORSER IN ACCORDANCE WITH SECTION 66 OF THE NEGOTIABLE INSTRUMENTS LAW.

III.

THE PARTY WHICH DID NOT EXERCISE THE REQUIRED DILIGENCE IS THE CAUSE OF THE LOSS AND BEARS THE DAMAGES.[10]

BDO argued that the CA's order for it to pay Lao was erroneous as the RTC had already adjudged with finality that it was not liable. It posited that the appellate court could not resolve issues not raised on appeal by both parties thereto. BDO pointed out that it was not a party in the appeal before the CA. It further stressed that neither Lao nor Union Bank assailed the RTC decision with respect to the dismissal of the complaint against it during the appeal before the CA, and even on motion

---

[9] 606 Phil. 35 (2009).

[10] *Rollo,* p. 18.

for reconsideration before the RTC. Thus, for failure to appeal therefrom, the RTC decision had already attained finality as to BDO.

BDO further averred that Union Bank, as the collecting bank and last endorser, must suffer the loss because it had the duty to ascertain the genuineness of all prior endorsement. It asserted that as the drawee bank, it could not be held liable because it merely relied on Union Bank's express guarantee. It added that the proximate cause of the loss suffered by Lao was the negligence of Union Bank when it allowed the deposit of the crossed check intended for Everlink to New Wave's account.

In his Comment,[11] dated January 26, 2017, Lao asserted that the CA did not commit any error when it resolved the issue on the liability of BDO even if it was not raised on appeal. He was of the view that the said issue was inextricably intertwined with the principal issue. Lao stated that the CA correctly adjudged BDO liable, without prejudice to its right to seek reimbursement from Union Bank, as it was the correct sequence in the enforcement of payment in cases where the collecting bank allowed a crossed check to be deposited in the account of a person other than the payee.

Union Bank did not file any comment on BDO's petition.

The Court's Ruling

The petition is meritorious.

Ordinarily, this Court would have concurred with the CA as regards the applicability of *Bank of America*. There is, however, a peculiar circumstance which would prevent the application of *Bank of America* in the present case.

Sequence of Recovery in cases of unauthorized payment of checks

The Court agrees with the appellate court that in cases of unauthorized payment of checks to a person other than the

---

[11] *Id*. at 228-242.

payee named therein, the drawee bank may be held liable to the drawer. The drawee bank, in turn, may seek reimbursement from the collecting bank for the amount of the check. This rule on the sequence of recovery in case of unauthorized check transactions had already been deeply embedded in jurisprudence.[12]

The liability of the drawee bank is based on its contract with the drawer and its duty to charge to the latter's accounts only those payables authorized by him. A drawee bank is under strict liability to pay the check only to the payee or to the payee's order. When the drawee bank pays a person other than the payee named in the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items.[13]

On the other hand, the liability of the collecting bank is anchored on its guarantees as the last endorser of the check. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting."

It has been repeatedly held that in check transactions, the collecting bank generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. If any of the warranties made by the collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check.[14]

---

[12] *Bank of America, NT & SA v. Associated Citizens Bank,supra*, note 9; *Traders Royal Bank v. Radio Philippines Network, Inc.*, 439 Phil. 475 (2002).

[13] *Philippine National Bank v. Rodriguez*, 588 Phil. 196, 214-215 (2008).

[14] *Areza v. Express Savings Bank, Inc.*, G.R. No. 176697, September 10, 2014, 734 SCRA 588, 605.

In the present case, BDO paid the value of Check No. 0127-242250 to Union Bank, which, in turn, credited the amount to New Wave's account. The payment by BDO was in violation of Lao's instruction because the same was not issued in favor of Everlink, the payee named in the check. It must be pointed out that the subject check was not even endorsed by Everlink to New Wave. Clearly, BDO violated its duty to charge to Lao's account only those payables authorized by him.

Nevertheless, even with such clear violation by BDO of its duty, the loss would have ultimately pertained to Union Bank. By stamping at the back of the subject check the phrase "all prior endorsements and/or lack of it guaranteed," Union Bank had, for all intents and purposes treated the check as a negotiable instrument and, accordingly, assumed the warranty of an endorser. Without such warranty, BDO would not have paid the proceeds of the check. Thus, Union Bank cannot now deny liability after the aforesaid warranty turned out to be false.[15]

Union Bank was clearly negligent when it allowed the check to be presented by, and deposited in the account of New Wave, despite knowledge that it was not the payee named therein. Further, it could not have escaped its attention that the subject checks were crossed checks.

A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. A check may be crossed generally or specially. A check is crossed especially when the name of a particular banker or company is written between the parallel lines drawn. It is crossed generally when only the words "and company" are written at all between the parallel lines.[16]

Jurisprudence dictates that the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once –

---

[15] *Bank of the Philippine Islands v. Court of Appeals*, 290 Phil. 452 (1992).

[16] *Go v. Metropolitan Bank*, 642 Phil. 264, 271-272 (2010).

to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose.[17] The effects of crossing a check, thus, relate to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein.[18]

It is undisputed that Check No. 0127-242250 had been crossed generally as nothing was written between the parallel lines appearing on the face of the instrument. This indicated that Lao, the drawer, had intended the same for deposit only to the account of Everlink, the payee named therein. Despite this clear intention, however, Union Bank negligently allowed the deposit of the proceeds of the said check in the account of New Wave.

Generally, BDO must be ordered to pay Lao the value of the subject check; whereas, Union Bank would be ordered to reimburse BDO the amount of the check. The aforesaid sequence of recovery, however, is not applicable in the present case due to the presence of certain factual peculiarities.

Simplification of the proceedings for Recovery

Although the rule on the sequence of recovery has been deeply engrained in jurisprudence, there may be exceptional circumstances which would justify its simplification. Stated differently, the aggrieved party may be allowed to recover directly from the person which caused the loss when circumstances warrant. In *Associated Bank v. Court of Appeals (Associated Bank)*,[19] the person who suffered the loss as a result of the unauthorized encashment of crossed checks was allowed to

---

[17] *State Investment House v. IAC*, 256 Phil. 762, 768 (1989).

[18] *Yang v. Court of Appeals*, 456 Phil. 378, 396 (2003).

[19] 284 Phil. 615 (1992).

recover the loss directly from the negligent bank despite the latter's contention of lack of privity of contract. The Court said:

> There being no evidence that the crossed checks were actually received by the private respondent, she would have a right of action against the drawer companies, which in turn could go against their respective drawee banks, which in turn could sue the herein petitioner as collecting bank. In a similar situation, it was held that, to simplify proceedings, the payee of the illegally encashed checks should be allowed to recover directly from the bank responsible for such encashment regardless of whether or not the checks were actually delivered to the payee. We approve such direct action in the case at bar.[20]

A peculiar circumstance in *Associated Bank* is the fact that the drawer companies, which should have been directly liable to the aggrieved payee, were not impleaded as parties in the suit. In this regard, it is a fundamental principle in this jurisdiction that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party. This principle conforms to the constitutional guarantee of due process of law.[21] To the mind of the Court, this principle was a foremost underlying consideration for allowing the direct recovery by the payee from the negligent collecting bank.

Finality of the RTC decision with respect to BDO justifies the simplification of the proceedings for recovery.

BDO argues that the appellate court erred in ordering it to pay the amount of the subject check to Lao because it was no longer a party in the case, not being impleaded in the appeal, and that the issue as regards its liability had already been settled with finality by the RTC.

The Court agrees.

---

[20] *Id.* at 623-624.

[21] *Dare Adventure Farm Corporation v. Court of Appeals*, 695 Phil. 681, 690 (2012).

It has been held that it is not the caption of the pleading, but the allegations therein that are controlling. The non-inclusion of a party in the title of the pleading is not fatal to the case, provided there is a statement in the body indicating that such non-included person is a party to the case.[22]

BDO was not impleaded as a party in Union Bank's appeal before the CA. This is evident from the title of the case before the CA, and the respective briefs of Union Bank and Lao, which mentioned only Lao and Union Bank as parties thereto. Moreover, in their respective briefs before the appellate court, neither Lao[23] nor Union Bank[24] made any statement or raised any issue on BDO's liability and its inclusion as a party in the appeal.

Consequently, because of Lao and Union Bank's failure to appeal the July 9, 2012 Decision of the RTC with respect to BDO's lack of liability, said decision became final as to the latter.

The finality of the July 9, 2012 RTC Decision as to BDO, which absolved it from any liability, necessarily means that it could not be prejudiced or adversely affected by the decision rendered in the appeal. It is elementary in this jurisdiction that a person cannot be bound by a decision wherein it was not a party.[25] A contrary finding would violate BDO's constitutional right to due process. Needless to state, the appellate court erred in ordering BDO to pay the amount of the subject check because the latter was not made a party in the appeal, and the issue as to its liability or lack thereof, was not raised on appeal.

From the foregoing, the Court is of the considered view that the pronouncements made in *Associated Bank* as regards the simplification of the recovery proceedings are applicable in the present case. The factual milieu of this case are substantially

---

[22] *Spouses Genato v. Viola*, 625 Phil. 514, 525, (2010).

[23] CA *rollo*, pp. 107-131.

[24] *Id*. at 51-88.

[25] *Buazon v. Court of Appeals*, G.R. No. 97749, March 19, 1993, 220 SCRA 182, 189.

similar with that of *Associated Bank*, *i.e.*, a crossed check was presented and deposited, without authority, in the account of a person other than the payee named therein; the collecting bank endorsed the crossed check and warrant the validity of all prior endorsements and/or lack of it; the warranty turned out to be false; and, a party to the check transaction, which would otherwise be held liable to the party aggrieved, was not made a party in the proceedings in court.

To summarize, Lao, the drawer of the subject check, has a right of action against BDO for its failure to comply with its duty as the drawee bank. BDO, in turn, would have a right of action against Union Bank because of the falsity of its warranties as the collecting bank. Considering, however, that BDO was not made a party in the appeal, it could no longer be held liable to Lao. Thus, following *Associated Bank*, the proceedings for recovery must be simplified and Lao should be allowed to recover directly from Union Bank.

WHEREFORE, the petition is **GRANTED**. The October 14, 2015 Decision and the September 5, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 100351 are hereby **REVERSED** and **SET ASIDE** insofar as it ordered petitioner BDO Unibank, Inc. to pay Selwyn Lao the amount of Check No. 0127-242250. The rest of the decision is **AFFIRMED**.

The amount shall earn interest at the rate of twelve percent (12%) *per annum* from August 24, 2001, the date of judicial demand, to June 30, 2013. From July 1, 2013, the rate shall be six percent (6%) *per annum* until full satisfaction.

SO ORDERED.

Peralta (Acting Chairperson), Leonen, and *Martires, JJ.,* concur.

Carpio, J., on official leave.

THIRD DIVISION

[G.R. No. 227306. June 19, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO ESPERANZA JESALVA *alias* "ROBERT SANTOS,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; THE FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED RESPECT AS IT IS IN A BETTER POSITION TO EVALUATE THE TESTIMONIAL EVIDENCE, ESPECIALLY WHERE THE SAID FINDINGS ARE SUSTAINED BY THE COURT OF APPEALS; EXCEPTIONS.—** As a general rule, we accord respect to the factual findings of the trial court as it is in a better position to evaluate the testimonial evidence. The rule finds an even more stringent application where the said findings are sustained by the CA. This rule, however, admits of exceptions, to wit: But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. x x x [W]e find that the prosecution failed to prove that accused-appellant conspired with Menieva and Ilaw in committing the crime of murder.

2. **CRIMINAL LAW; REVISED PENAL CODE; FELONIES; CONSPIRACY; ESSENCE THEREOF; THE ELEMENTS OF CONSPIRACY, LIKE THE PHYSICAL ACTS CONSTITUTING THE CRIME ITSELF, MUST BE PROVED BEYOND REASONABLE DOUBT; RATIONALE. —** Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. We explained the reason for the rule, thus: As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are

to maintain in full strength the substance of the time-honored principle of criminal law requiring proof beyond reasonable doubt before conviction.

3. **ID.; ID.; ID.; ID.; DIRECT PROOF IS NOT ESSENTIAL TO PROVE CONSPIRACY FOR IT MAY BE DEDUCED FROM THE ACTS OF THE ACCUSED BEFORE, DURING AND AFTER THE COMMISSION OF THE CRIME CHARGED, FROM WHICH IT MAY BE INDICATED THAT THERE IS A COMMON PURPOSE TO COMMIT THE CRIME, ONCE CONSPIRACY IS SHOWN, THE ACT OF ONE IS THE ACT OF ALL THE CONSPIRATORS.—** Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime. It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose. We held: "To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act x x x. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals."

4. **ID.; ID.; ID.; ID.; IN THE ABSENCE OF STRONG MOTIVES ON THE PART OF THE ACCUSED-APPELLANT AND HIS CO-ACCUSED TO KILL THE DECEASED, IT CANNOT SAFELY BE CONCLUDED THAT THEY CONSPIRED TO COMMIT THE CRIME.—** To determine if accused-appellant conspired with Menieva and Ilaw, the focus of the inquiry should necessarily be the overt acts of accused-appellant before, during and after the stabbing incident. On accused-appellant's acts before the stabbing incident, the OSG argues that conspiracy to kill Ortigosa is evident considering the proximity in time between accused-appellant's walking away and re-appearing accompanied by Menieva and Ilaw. To the

OSG, it can be reasonably inferred that when accused-appellant disappeared, he sought the help of Menieva and Ilaw to carry out the evil plan against Ortigosa or that accused-appellant signaled the arrival of the victim for his group to execute their criminal design. This argument is speculative and remains unsubstantiated. More, it falters as there is no evidence that accused-appellant and his co-accused had any enmity or grudge against the deceased. In the absence of strong motives on their part to kill the deceased, it cannot safely be concluded that they conspired to commit the crime. Likewise, there is no evidence showing that accused-appellant was purposely waiting for Ortigosa at the time and place of the incident and that Menieva and Ilaw were on standby, awaiting for accused-appellant's signal. Surely, accused-appellant could not have anticipated that on September 16, 2007, at around 1:00 a.m., Ortigosa and his group would pass by and go to the store to buy cigarettes.

5. ID.; ID.; ID.; ID.; MERE KNOWLEDGE, ACQUIESCENCE OR APPROVAL OF THE ACT, WITHOUT THE COOPERATION AND THE AGREEMENT TO COOPERATE, IS NOT ENOUGH TO ESTABLISH CONSPIRACY, AND WHERE THE ONLY ACT ATTRIBUTABLE TO THE OTHER ACCUSED IS AN APPARENT READINESS TO PROVIDE ASSISTANCE, BUT WITH NO CERTAINTY AS TO ITS RIPENING INTO AN OVERT ACT, THERE IS NO CONSPIRACY.— Accused-appellant's act of pointing to the victim and his group is not an overt act which shows that accused-appellant acted in concert with his co-accused to cause the death of Ortigosa. We stress that mere knowledge, acquiescence or approval of the act, without the cooperation and the agreement to cooperate, is not enough to establish conspiracy. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, their mere presence does not make them parties to it, absent any active participation in the furtherance of the common design or purpose. Likewise, where the only act attributable to the other accused is an apparent readiness to provide assistance, but with no certainty as to its ripening into an overt act, there is no conspiracy. In this case, while accused-appellant's presence and act of pointing at the victim and his group may mean he approved of the crime or that he was ready to assist his co-accused, absent any other overt act on his part, there is no conspiracy.

6. ID.; ID.; ID.; ID.; A CONVICTION PREMISED ON A FINDING OF CONSPIRACY MUST BE FOUNDED ON FACTS, NOT ON MERE INFERENCES AND PRESUMPTION.— We emphasize that the prosecution must establish conspiracy beyond reasonable doubt. A conviction premised on a finding of conspiracy must be founded on facts, not on mere inferences and presumption. We repeat: Conspiracy is not a harmless innuendo to be taken lightly or accepted at every turn. It is a legal concept that imputes culpability under specific circumstances. As such, it must be established as clearly as any element of the crime. The quantum of evidence to be satisfied is, we repeat, beyond reasonable doubt.

7. ID.; ID.; ID.; ID.; IN THE ABSENCE OF CONSPIRACY, ACCUSED-APPELLANT IS RESPONSIBLE ONLY FOR THE CONSEQUENCES OF HIS OWN ACTS; TO BE LIABLE EITHER AS A PRINCIPAL BY INDISPENSABLE COOPERATION OR AS AN ACCOMPLICE, THE ACCUSED MUST UNITE WITH THE CRIMINAL DESIGN OF THE PRINCIPAL BY DIRECT PARTICIPATION.— In the absence of conspiracy, accused-appellant is responsible only for the consequences of his own acts. In this case, all that accused-appellant did was to stare and point at the victim and his companions. These, however, are not crimes. Neither can accused-appellant be considered a principal by indispensable cooperation nor an accomplice in the crime of murder. The cooperation that the law punishes is the assistance knowingly or intentionally rendered which cannot exist without previous cognizance of the criminal act intended to be executed. Thus, to be liable either as a principal by indispensable cooperation or as an accomplice, the accused must unite with the criminal design of the principal by direct participation. In this case, nothing in the records shows that accused-appellant knew Menieva was going to stab Ortigosa, thus creating a doubt as to accused-appellant's criminal intent.

8. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE FINDING OF GUILT CANNOT BE UPHELD ABSENT ANY EVIDENCE TO CREATE THE MORAL CERTAINTY REQUIRED TO CONVICT ACCUSED-APPELLANT, AS MORAL CERTAINTY, NOT MERE POSSIBILITY, DETERMINES THE GUILT OR INNOCENCE OF THE ACCUSED.—

> Indeed, absent any evidence to create the moral certainty required to convict accused-appellant, we cannot uphold the trial court's finding of guilt. Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty, or even property. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them. Moral certainty, not mere possibility, determines 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

JARDELEZA, *J.*:

This appeal seeks to reverse and set aside the Court of Appeals (CA) Decision[1] dated September 28, 2015 in CA-G.R. CR-HC-06823. The CA upheld the Decision[2] dated April 14, 2014 of the Regional Trial Court (RTC) of Quezon City, Branch 80, in Criminal Case No. Q-08-152149, which found accused-appellant Roberto Esperanza Jesalva alias "Robert Santos" (accused-appellant) guilty beyond reasonable doubt of the crime of murder.

An Information dated March 31, 2008 was filed charging accused-appellant, Ryan Menieva *y* Labina[3] (Menieva) and Junie Ilaw (Ilaw) for the murder of Arnel Ortigosa *y* Cervana[4] (Ortigosa), committed as follows:

That on or about the 16th day of September 2007, in Quezon City, Philippines, the above-named accused, conspiring together,

---

[1] *Rollo*, pp. 2-13. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Stephen C. Cruz and Pedro B. Corales, concurring.

[2] CA *rollo*, pp. 12-17. Penned by Presiding Judge Charito B. Gonzales.

[3] Also referred to as "Menieba" in some parts of the records.

[4] Also referred to as "Artigosa" in some parts of the records.

confederating with and mutually helping one another did then and there, wilfully, unlawfully and feloniously with intent to kill with evident premeditation, treachery and taking advantage of superior strength, attack, assault and employ personal violence upon the person of Arnel [O]rtigosa y Cervana, by then and there stabbing him with a sharp bladed instrument hitting him on the chest, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Arnel [O]rtigosa *y* Cervana.

That the crime was committed with qualifying aggravating circumstance of treachery when the offended party was not given opportunity to make a defense as the attack was sudden, unexpected and without warning.

That the crime was committed with abuse of superior strength for whereas the accused were armed with a knife and firearm of unknown caliber, the victim was unarmed.

Contrary to law.[5]

A warrant of arrest was issued against accused-appellant, Menieva and Ilaw.[6] However, only accused-appellant was arrested. Upon arraignment, accused-appellant pleaded not guilty to the offense charged.[7] Trial ensued.

The facts of the case are as follows:

On September 16, 2007, at around 1:00 a.m., Ortigosa, his cousin Renato B. Flores (Flores) and Manny Boy Ditche were drinking in Dupax Street, Old Balara, Quezon City. Later, they decided to go to a store to buy cigarettes.[8] On their way to the store, Flores noticed accused-appellant standing in a corner near the store and staring at them. Then, accused-appellant walked away and disappeared. Later, accused-appellant re-appeared, accompanied by Menieva and Ilaw, and followed Ortigosa and

---

[5] CA *rollo*, pp. 10-11.

[6] RTC records, p. 17.

[7] *Id.* at 24.

[8] TSN, November 8, 2011, pp. 3-5.

his group to the store.[9] When accused-appellant and his companions were already in front of Ortigosa, Menieva uttered, "*Nel, ano ba yan?*" and proceeded to stab Ortigosa twice with an icepick. Menieva stabbed Ortigosa first on the right portion of his chest, then on his left armpit. As Menieva stabbed Ortigosa, Ilaw pointed a *sumpak* at Ortigosa while accused-appellant pointed at Ortigosa's group and left.[10]

After the stabbing, Ortigosa and his group tried to run back to where they were drinking. Before they reached the place, Ortigosa fell on the ground. His companions rushed him to East Avenue Medical Center where he died.[11]

The prosecution and defense stipulated on the testimony of Dr. Filemon C. Porciuncula, Jr. (Dr. Porciuncula), the medico-legal assigned with the Central Police District Crime Laboratory on September 16, 2007. Dr. Porciuncula conducted a post-mortem examination on Ortigosa's cadaver, determined the cause of death as stab wounds on Ortigosa's trunk and prepared Medico-Legal Report No. 599-07 and Ortigosa's death certificate.[12]

For its part, the defense presented accused-appellant. Accused-appellant denied any participation in Ortigosa's stabbing. He claimed that on the night of the incident, he was waiting for his sister on the corner of Dupax Street. While waiting, he saw and heard people running and shouting which caused him to leave the place.[13]

On April 14, 2014, the RTC of Quezon City, Branch 80 rendered a Decision holding that accused-appellant conspired with Menieva and Ilaw to kill Ortigosa.[14] The RTC held that Flores positively identified accused-appellant in open court as

---

[9] RTC records, pp. 9-10.

[10] TSN, November 8, 2011, pp. 4-5.

[11] TSN, November 8, 2011, pp. 5-6.

[12] RTC records, pp. 111-114.

[13] TSN, December 3, 2013, pp. 3-5.

[14] CA *rollo*, p. 17.

the person who stabbed Ortigosa twice with an icepick.[15] As treachery attended the killing, the crime is murder. The RTC convicted accused-appellant, the dispositive portion of which reads:

> WHEREFORE, premises considered, the court finds accused ROBERTO ESPERANZA JESALVA alias ROBERT SANTOS guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code as amended and is hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of Arnel Ortigosa the amounts of ₱75,000.00 as civil indemnity, ₱24,000.00 as actual damages, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.
>
> Let an alias warrant of arrest be issued against accused RYAN MENIEBA y LABINA and JUNIE ILAW, the same to remain standing until their apprehension.
>
> SO ORDERED.[16]

On September 28, 2015, the CA affirmed with modification the trial court's Decision and held that conspiracy was evident from the coordinated movements of the three accused.[17] The CA, however, differed with the RTC's findings regarding accused-appellant's participation in the crime. It determined that it was Menieva who stabbed Ortigosa and that accused-appellant's participation before, during and after the incident was confined to the following: (1) accompanying Menieva and Ilaw to the store where Ortigosa and his group were; and (2) pointing at the group while Ortigosa was stabbed.[18] The CA also held that the damages awarded shall earn interest at 6% *per annum* from finality of judgment until fully satisfied.[19]

Hence, this appeal.

---

[15] *Id.* at 15.

[16] *Id.* at 17.

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

[18] *Id.*

[19] *Rollo*, p. 12.

On February 9, 2017, accused-appellant filed a Manifestation In Lieu of Supplemental Brief[20] requesting that his appellant's brief be adopted as his supplemental brief. On February 13, 2017, the Office of the Solicitor General (OSG) also filed its Manifestation and Motion In Lieu of Supplemental Brief[21] stating that it would no longer file a supplemental brief as it has already substantially and exhaustively responded to and refuted accused-appellant's arguments in its appellee's brief.

The appeal is meritorious.

As a general rule, we accord respect to the factual findings of the trial court as it is in a better position to evaluate the testimonial evidence.[22] The rule finds an even more stringent application where the said findings are sustained by the CA.[23] This rule, however, admits of exceptions, to wit:

> But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. x x x[24]

In this case, we find that the prosecution failed to prove that accused-appellant conspired with Menieva and Ilaw in committing the crime of murder.

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts

---

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

[21] *Id.* at 28-29.

[22] *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 11.

[23] *People v. Cial*, G.R. No. 191362, October 9, 2013, 707 SCRA 285, 292, citing *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 387-388.

[24] *Quidet v. People*, *supra.*

constituting the crime itself, must be proved beyond reasonable doubt.[25] We explained the reason for the rule, thus:

> As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle of criminal law requiring proof beyond reasonable doubt before conviction. x x x[26]

Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime.[27] It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose.[28] We held:

> "To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act xxx. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals."[29]

Both the RTC and the CA ruled that conspiracy was duly established. In particular, the CA concluded:

---

[25] *Id.* at 10.

[26] *People v. Tividad*, G.R. No. L-21469, June 30, 1967, 20 SCRA 549, 554.

[27] *People v. Campos*, G.R. No. 176061, July 4, 2011, 653 SCRA 99, 113.

[28] *People v. Vistido*, G.R. No. L-31582, October 26, 1977, 79 SCRA 616, 621-622.

[29] *People v. Medice*, G.R. No. 181701, January 18, 2012, 663 SCRA 334, 345-346, citing *People v. de Jesus*, G.R. No. 134815, May 27, 2004, 429 SCRA 384, 404.

In the present case, conspiracy was evident from the coordinated movements of the three (3) accused. From the prosecution's evidence, [Flores] saw accused-appellant at the corner of the street, who initially disappeared and re-appeared with co-accused [Menieva and Ilaw]. While [Menieva] was stabbing the victim, [Ilaw] was pointing a "sumpak" at the latter, with the accused-appellant pointing his finger at them before leaving.

[Flores] positively identified the accused-appellant as the person who accompanied his co-accused [Menieva and Ilaw]. He described accused-appellant's participation before the incident, during the incident, *i.e.,* while the victim was being stabbed by his co-accused [Menieva], and after the incident. Evidently, the accused-appellant and company all acted in confabulation in furtherance of their common design and purpose, *i.e.* to kill the victim. Thus, the court *a quo* correctly held that conspiracy is present.[30] (Citation omitted.)

We disagree.

To determine if accused-appellant conspired with Menieva and Ilaw, the focus of the inquiry should necessarily be the overt acts of accused-appellant before, during and after the stabbing incident.[31]

On accused-appellant's acts before the stabbing incident, the OSG argues that conspiracy to kill Ortigosa is evident considering the proximity in time between accused-appellant's walking away and re-appearing accompanied by Menieva and Ilaw. To the OSG, it can be reasonably inferred that when accused-appellant disappeared, he sought the help of Menieva and Ilaw to carry out the evil plan against Ortigosa or that accused-appellant signaled the arrival of the victim for his group to execute their criminal design.[32]

This argument is speculative and remains unsubstantiated. More, it falters as there is no evidence that accused-appellant and his co-accused had any enmity or grudge against the

---

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

[31] *Quidet v. People*, *supra* note 22 at 12.

[32] CA *rollo*, p. 67.

deceased. In the absence of strong motives on their part to kill the deceased, it cannot safely be concluded that they conspired to commit the crime.[33] Likewise, there is no evidence showing that accused-appellant was purposely waiting for Ortigosa at the time and place of the incident and that Menieva and Ilaw were on standby, awaiting for accused-appellant's signal. Surely, accused-appellant could not have anticipated that on September 16, 2007, at around 1:00 a.m., Ortigosa and his group would pass by and go to the store to buy cigarettes.

During and after the stabbing incident, Flores testified that what accused-appellant did during the stabbing was to point at them before walking away. On cross, Flores admitted that accused-apellant did not inflict any injury on Ortigosa:

CROSS EXAMINATION OF ATTY. BANDAO

Atty. Bandao to Witness
Q A while ago, Mr. Witness, you testified that in the early morning of September 16, 2007, you were in the company of one Arnel Ortigosa, is that correct?

CROSS EXAMINATION OF ATTY. BANDAO

Witness
A Yes, sir.

Atty. Bandao
Q Now, you claimed that while you were in the company of Arnel Ortigosa, it was then that Ryan Menieba stabbed him, is that correct?

A Yes, sir.

Q Now, as far as the accused Robert Santos is concerned, you would agree with me that he never inflicted any physical injuries or whatever kind of injury to Arnel Ortigosa?

A Yes, sir.[34] (Emphasis in the original.)

Accused-appellant's act of pointing to the victim and his group is not an overt act which shows that accused-appellant

---

[33] *Quidet v. People*, *supra* note 22 at 15.

[34] TSN, November 8, 2011, pp. 7-8.

acted in concert with his co-accused to cause the death of Ortigosa. We stress that mere knowledge, acquiescence or approval of the act, without the cooperation and the agreement to cooperate, is not enough to establish conspiracy. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, their mere presence does not make them parties to it, absent any active participation in the furtherance of the common design or purpose.[35] Likewise, where the only act attributable to the other accused is an apparent readiness to provide assistance, but with no certainty as to its ripening into an overt act, there is no conspiracy.[36] In this case, while accused-appellant's presence and act of pointing at the victim and his group may mean he approved of the crime or that he was ready to assist his co-accused, absent any other overt act on his part, there is no conspiracy.

We emphasize that the prosecution must establish conspiracy beyond reasonable doubt. A conviction premised on a finding of conspiracy must be founded on facts, not on mere inferences and presumption.[37] We repeat:

> Conspiracy is not a harmless innuendo to be taken lightly or accepted at every turn. It is a legal concept that imputes culpability under specific circumstances. As such, it must be established as clearly as any element of the crime. The quantum of evidence to be satisfied is, we repeat, beyond reasonable doubt.[38] (Citation omitted.)

In the absence of conspiracy, accused-appellant is responsible only for the consequences of his own acts.[39] In this case, all that accused-appellant did was to stare and point at the victim and his companions. These, however, are not crimes.

---

[35] *People v. Mandao*, G.R. No. 135048, December 3, 2002, 393 SCRA 292, 299.

[36] *Id.* at 304.

[37] *Li v. People*, G.R. No. 127962, April 14, 2004, 427 SCRA 217, 232-233.

[38] *People v. Cupino*, G.R. No. 125688, April 3, 2000, 329 SCRA 581, 595.

[39] *Araneta, Jr. v. Court of Appeals*, G.R. Nos. 43527 & 43745, July 3, 1990, 187 SCRA 123, 133.

Neither can accused-appellant be considered a principal by indispensable cooperation nor an accomplice in the crime of murder. The cooperation that the law punishes is the assistance knowingly or intentionally rendered which cannot exist without previous cognizance of the criminal act intended to be executed. Thus, to be liable either as a principal by indispensable cooperation or as an accomplice, the accused must unite with the criminal design of the principal by direct participation.[40] In this case, nothing in the records shows that accused-appellant knew Menieva was going to stab Ortigosa, thus creating a doubt as to accused-appellant's criminal intent.

Indeed, absent any evidence to create the moral certainty required to convict accused-appellant, we cannot uphold the trial court's finding of guilt. Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty, or even property. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them.[41] Moral certainty, not mere possibility, determines the guilt or innocence of the accused.[42]

WHEREFORE, the Decision appealed from is **REVERSED** and **SET ASIDE**. Accused-appellant ROBERTO ESPERANZA JESALVA alias "Robert Santos" is **ACQUITTED** on reasonable doubt of the crime charged. Accordingly, he is ordered immediately released from custody unless he is lawfully held for another cause.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Tijam, JJ.,* concur.

---

[40] *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 197.

[41] *People v. Roche*, G.R. No. 115182, April 6, 2000, 330 SCRA 91, 114, citing *Pepito v. Court of Appeals*, G.R. No. 119942, July 8, 1999, 310 SCRA 128, 143.

[42] *People v. Mandao, supra* note 35 at 305, citing *People v. Albacin*, G.R. No. 133918, September 13, 2000, 340 SCRA 249, 261-262.

EN BANC

[A.C. No. 11480. June 20, 2017]
(Formerly CBD Case No. 05-1558)

ARLENE VILLAFLORES-PUZA, *complainant, vs.* **ATTY. ROLANDO B. ARELLANO,** *respondent.*

SYLLABUS

LEGAL ETHICS; NOTARIAL RULES; ONLY PERSONS COMMISSIONED AS NOTARY PUBLIC MAY PERFORM NOTARIAL ACTS.— In *Mariano v. Atty. Echanez*, the Court reiterated that notarization is not a hollow act which may be brushed aside lightly: x x x Any transgression of the notarial rules should not be treated trivially but must be punished accordingly to preserve the integrity of notarization. Under the rules, only persons who are commissioned as notary public may perform notarial acts within the territorial jurisdiction of the court which granted the commission. x x x A lawyer who notarizes documents without a valid notarial commission is remiss in his professional duties and responsibilities.

D E C I S I O N

***PER CURIAM*:**

Subject of this disposition is the February 25, 2016 Resolution[1] of the Integrated Bar of the Philippines-Board of Governors *(IBP-BOG)*, which adopted and approved with modification the Report and Recommendation[2] of the Investigating Commissioner.

In her Complaint,[3] dated August 26, 2005, Arlene O. Villaflores-Puza *(complainant)* accused Atty. Rolando B.

---

[1] *Rollo*, pp. 58-59.

[2] *Id*. at 60-62.

[3] *Id*. at 2-4.

Arellano *(respondent)* of notarizing affidavits of his witnesses without a notarial commission.

The Complaint

Complainant was the defendant in a case for declaration of nullity of marriage filed by her husband, Ernesto Puza *(Puza)*, who was represented by respondent as his counsel. On July 21, 2005, Puza, through respondent, filed his formal offer of evidence, which included some affidavits of witnesses notarized by him.

In the aforesaid affidavits, it was indicated that respondent was issued a notarial commission in Mandaluyong City. Upon inquiry, however, complainant discovered that he was never issued a notarial commission in Mandaluyong City. In support thereof, she attached a Certification,[4] issued by the Office of the Clerk of Court of the Regional Trial Court *(RTC)* of Mandaluyong City, attesting that he was not a commissioned notary public in said city.

Report and Recommendation

In her Report and Recommendation,[5] dated February 10, 2016, Commissioner Rebecca Villanueva-Maala *(Commissioner Villanueva-Maala)* recommended respondent's suspension from the practice of law for a period of five (5) years. She stressed that respondent's failure to answer the complaint against him, in spite of due notice and order to attend the scheduled hearings, illustrated his flouting resistance to the lawful orders of the court, which deserves disciplinary action. In addition, Commissioner Villanueva-Maala noted that notarizing documents without a notarial commission constituted gross misconduct and deserved to be punished.

In its February 25, 2016 Resolution,[6] the IBP-BOG adopted and approved with modification the recommendation of Commissioner Villanueva-Maala. The resolution reads:

---

[4] *Id*. at 43.

[5] *Id*. at 60-62.

[6] *Id*. at 58-59.

RESOLVED to ADOPT with modification the recommendation of the Investigating Commissioner reducing the penalty to THREE (3) YEARS SUSPENSION FROM THE PRACTICE OF LAW to make it commensurate with the gravity of the offense committed.[7]

Hence, the case was transmitted to the Court for review.

The Court's Ruling

The Court agrees with the IBP-BOG but modifies the penalty imposed.

In *Mariano v. Atty. Echanez*,[8] the Court reiterated that notarization is not a hollow act which may be brushed aside lightly:

> Time and again, this Court has stressed that notarization is not an empty, meaningless and routine act. It is invested with substantive public interest that only those who are qualified or authorized may act as notaries public. It must be emphasized that the act of notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. A notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[9]

Any transgression of the notarial rules should not be treated trivially but must be punished accordingly to preserve the integrity of notarization. Under the rules, only persons who are commissioned as notary public may perform notarial acts within the territorial jurisdiction of the court which granted the commission.[10]

In the present case, it was sufficiently established that respondent was without a notarial commission when he notarized

---

[7] *Id*. at 58.

[8] A.C. No. 10373, May 31, 2016.

[9] *Id*.

[10] *Re: Violation of Rules on Notarial Practice*, A.M. No. 09-6-1-SC, January 21, 2015, 746 SCRA 331, 336.

the affidavits he offered in evidence. This was supported by the certification issued by the RTC of Mandaluyong City that from January 1998 until August 2005, respondent was never commissioned as a notary public. A lawyer who notarizes documents without a valid notarial commission is remiss in his professional duties and responsibilities.[11]

Further, it is noteworthy that respondent did not even attempt to answer the accusations against him. He failed to comply with the orders of the investigating commissioner and he did not attend the scheduled hearings. On this ground alone, respondent could have been penalized more heavily because he was bound to comply with all the lawful directives of the IBP, not only because he is a member, but more importantly because the IBP is the Court-designated investigator of his case.[12]

Thus, the Court agrees with the suspension meted against respondent. In addition, he should be forever barred from being commissioned a notary public all over the Philippines after exhibiting conduct, which renders him unfit to perform the sacred duties of a notary public. Respondent deliberately performed notarial acts despite full knowledge that he was never commissioned as a notary in Mandaluyong City.

WHEREFORE, respondent Atty. Rolando B. Arellano is **SUSPENDED** from the practice of law for three (3) years and **PERMANENTLY DISQUALIFIED** from being commissioned as a Notary Public.

This order is **IMMEDIATELY EXECUTORY**.

Let copies of this decision be furnished the Office of the Bar Confidant to be attached to the personal record of Atty. Rolando B. Arellano; the Office of the Court Administrator for dissemination to all lower courts; and the Integrated Bar of the Philippines, for proper guidance and information.

---

[11] *Japitana v. Atty. Parado*, A.C. No. 10859, January 26, 2016.

[12] *Vecino v. Atty. Ortiz, Jr.*, 579 Phil. 14, 17 (2008).

SO ORDERED.

Velasco, Jr.,[*] *(Acting C.J.) Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, Martires,* and *Tijam, JJ.,* concur.

Sereno, C.J. and *Carpio, J.*, on official leave.

Caguioa, J., on leave.

EN BANC

[A.M. No. P-16-3614. June 20, 2017]
(Formerly OCA IPI No. 16-4630-P)

ANONYMOUS, *complainant, vs.* **GLENN L. NAMOL, Court Interpreter, ERLA JOIE L. ROCO, Legal Researcher and EDSELBERT ANTHONY A. GARABATO, Process Server, all of the Regional Trial Court, Branch 63, Bayawan City, Negros Oriental,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DEMANDING AND RECEIVING MONEY FROM PARTY WHO HAS A PENDING CASE BEFORE THE COURT CONSTITUTE SERIOUS MISCONDUCT IN OFFICE.— The act of Garabato in demanding and receiving money from Bucad who had a pending case before the courts constituted serious misconduct in office. The transcript of stenographic notes (TSN), taken on October 23, 2013 during the clarificatory meeting before Judge Jayme, clearly demonstrated how Garabato fell short of the standards required of him as an employee of the court. In the said meeting, it was

---

[*] Per Special Order No. 2450 dated June 20, 2017.

shown that he went to Bucad, induced him to plead guilty to a lesser offense, and demanded the amount of ₱10,000.00, with the assurance that he would facilitate the approval of his plea.

2. ID.; ID.; ID.; THE CODE OF CONDUCT FOR COURT PERSONNEL; COURT PERSONNEL SHOULD NOT RECEIVE TIPS OR OTHER REMUNERATIONS FOR ASSISTING OR ATTENDING TO PARTIES ENGAGED IN TRANSACTIONS OR INVOLVED IN ACTIONS OR PROCEEDING WITH THE JUDICIARY; NO DEFENSE IN RECEIVING MONEY FROM PARTY-LITIGANTS, AS THE ACT ITSELF MAKES COURT EMPLOYEES GUILTY OF GRAVE MISCONDUCT, PUNISHABLE BY A PENALTY OF DISMISSAL.— Garabato's alibi that the money he received would be used for the expenses that would be incurred in the filing of Bucad's application for probation was a ludicrous defense. In the case of *Villahermosa, Sr. v. Sarcia,* the Court explicitly stated that "[t]he sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee." The Court further wrote: The Code of Conduct for Court Personnel requires that court personnel avoid conflicts of interest in performing official duties. It mandates that court personnel should not receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceeding with the judiciary. The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved. Court personnel cannot take advantage of the vulnerability of party-litigants. x x x **There is no defense in receiving money from party-litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.**

3. ID.; ID.; ID.; ID.; COURT PERSONNEL ARE FORBIDDEN FROM SOLICITING OR ACCEPTING 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 HIS OFFICIAL

DUTIES.— Time and again, the Court has always reminded all employees of the Judiciary, from judges to the most junior clerks, to conduct themselves in a manner exemplifying integrity, honesty and uprightness. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for, and trust, in the Judiciary. Section 2, Canon I of the Code of Conduct for Court Personnel specifically prohibits all court employees from soliciting or accepting any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions. They are likewise forbidden from soliciting or accepting 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 his official duties.

4. ID.; ID.; ID.; ID.; COURT EMPLOYEES MUST OBSERVE THE PRESCRIBED OFFICE HOURS AND THE EFFICIENT USE OF EVERY MOMENT THEREOF FOR PUBLIC SERVICE IF ONLY TO RECOMPENSE THE GOVERNMENT AND ULTIMATELY THE PEOPLE WHO SHOULDER THE COST OF MAINTAINING THE JUDICIARY.— Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. They must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty; it is a mission. In the present case, Namol and Garabato admitted that after they had received the letter requiring them to comment on the April 14, 2014 anonymous letter-complaint, they left the court premises on different occasions and went to the house of Lasconia and to the school where Aragones was teaching in order to confront them regarding the allegations in the complaint. As court employees, Namol and Garabato are reminded to observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the Judiciary. As such, they must, at all times, strictly observe official time to inspire public respect for the justice system.

5. ID.; ID.; ID.; LOAFING OR FREQUENT UNAUTHORIZED ABSENCES FROM DUTY DURING REGULAR OFFICE

HOURS IS A GRAVE OFFENSE PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE, AND DISMISSAL FOR THE SECOND OFFENSE.— Under Section 52 (A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936, loafing or frequent unauthorized absences from duty during regular office hours is a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Under the circumstances, the penalty of one (1) month suspension is proper. With respect to Garabato, however, considering that he was found administratively liable for two offenses, the penalty to be imposed should correspond to the most serious charge and the lighter offense, which is loafing, shall be considered an aggravating circumstance.

6. **ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY IS DEFINED AS THE FAILURE OF AN EMPLOYEE TO GIVE PROPER ATTENTION TO A REQUIRED TASK OR TO DISCHARGE A DUTY DUE TO CARELESSNESS OR INDIFFERENCE; FAILURE TO REPORT THE ILLEGAL ACTIVITY OF A CO-EMPLOYEE TO HER SUPERIOR SO THAT APPROPRIATE STEPS COULD BE TAKEN AND THE APPROPRIATE DISCIPLINARY MEASURE COULD BE IMPOSED CONSTITUTES SIMPLE NEGLECT OF DUTY.—** In the case of Roco, the finding of the OCA is well-taken. He should be held liable for simple neglect of duty which is defined as "the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference." Roco simply failed to exercise reasonable diligence and prudence when she failed to report the illegal activity of Garabato to her superior, the Branch Clerk of Court, or directly to the Judge. x x x. The charge against Garabato was a serious accusation that should not have been taken lightly. Roco should have done more than merely talk to the parties and instruct Garabato to return the ₱3,000.00 to Bucad. She should have reported the matter to her superior so the appropriate steps could have been taken and the appropriate disciplinary measure could be imposed, if warranted.

7. **LEGAL ETHICS; JUDGES; THE NEW CODE OF JUDICIAL CONDUCT; A JUDGE SHOULD INITIATE AN INVESTIGATION OF THE UNPROFESSIONAL**

CONDUCT COMMITTED BY THE COURT PERSONNEL UNDER HIS SUPERVISION.— Section 3, Canon 2 of the New Code of Judicial Conduct provides: Section 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware. Pursuant to said section, Judge Jayme should have caused the investigation of the unprofessional conduct committed by the court personnel under his supervision. When Judge Jayme came to know of the extortion committed by Garabato against Bucad, he merely called for a meeting between Garabato and the complainants. He was well aware of the extortion activity being committed within the court and yet he failed to initiate any investigation for appropriate disciplinary action against the erring employee. Hence, Judge Jayme should be required to explained why no disciplinary action should be taken against him for his failure to take the appropriate disciplinary measure against the erring court personnel.

D E C I S I O N

PER CURIAM:

Before the Court is an anonymous Letter-Complaint,[1] dated April 14, 2014, from the Concerned Lawyers of the Third District of Negros Oriental *(complainants)* against Edselbert "Jun-Jun" Garabato *(Garabato),* Process Server; Erla Joie L. Roco *(Roco)*,[2] Legal Researcher; and Glenn Namol *(Namol)*, Court Interpreter, all of the Regional Trial Court *(RTC)*, Branch 63, Bayawan City, Negros Oriental, for grave misconduct due to case fixing, marriage solemnization fixing, improper solicitation, gross ignorance of the law, and conduct unbecoming of a court employee.

The letter-complaint alleged the following:

As against Court Interpreter Glenn Namol and Process Server Edselbert "Jun-Jun" Garabato:

---

[1] *Rollo*, pp. 10-15.

[2] Referred to as Mrs. Erla Lajot Roco in the anonymous letter; *id*.

The undesirability of respondent Edselbert "Jun Jun" Garabato in confederation with court interpreter Glenn Namol are demonstrated in the following two *(2)* incidents:

1. After Criminal Case No. 1197, Pp vs. Joe Darlene Lasconia y Sastre for Rape was provisionally dismissed for lack of interest to prosecute sometime in September 2012, respondents Jun Jun Garabato and Glenn Namol visited Danilo "Nene" Lasconia, father of accused Joe Darlene, at his residence for several times at Yardahan, Basay, Negros Oriental, because ALLEGEDLY they were sent by Judge Roderick A. Maxino to ask money "for the boys." He gave the two *(2)* respondents ₱3,000.00. However, the two *(2)* asked for more which prompted him to add another three thousand pesos *(Php3,000.00)*. The money he gave was taken from his capital for buying and selling fish business.

2. One Liezel Aragones, a public school teacher of Basay, Negros Oriental, and a resident of Poblacion, Basay, Negros Oriental, and her fiancé whose surname is Manuel, who wanted to marry, went to the RTC, Branch 63, Bayawan City, sometime in September or October 2013, where they met respondents Edselbert "Jun-Jun" Garabato and Glenn Namol in court. The two *(2)* respondents asked them to pay six thousand pesos *(Php6,000.00)* because they will pay one thousand five hundred pesos *(₱1,500.00)* for the judge and four thousand five hundred pesos *(Php4,500.00)* for the processing of papers. Indeed, the couple paid them six thousand pesos *(Php6,000.00)*. However, it did not prosper because Judge Rogaciano Rivera of MTC Sta. Catalina, for two *(2)* Mondays was on leave. Eventually, the two *(2)* were asked to return the amount but only three thousand pesos *(Php3,000.00)* was returned and the three thousand pesos *(Php3,000.00)* remained unpaid.

x x x x x x x x x

Respondents Edselbert "Jun-Jun" Garabato and Glenn Namol confederated and conspired in money making activities by asking money from litigants whose cases have just been dismissed or terminated in court by making it appear that these persons are obligated to the court personnel of RTC, Branch 63, Bayawan City. Even though it is not necessary, they helped each other in making false pretenses thereby besmirching the integrity of the Supreme Court.

As against Process Server Edselbert "Jun-Jun" Garabato and Legal Researcher Mrs. Erla L. Roco:

This is evidenced by the admission of Edselbert "Jun-Jun" Garabato and Legal Researcher Mrs. Erla Lajot Roco in the TSN taken on October 23, 2013 at 8:30 o'clock in the morning. The whole transcript of records is marked as Annex "1" up to "13" and being a public record it is now used by us as annexes and made as an integral part of this complaint.

This transcript of records was taken during a meeting called for by Judge Ananson E. Jayme, Executive and Presiding Judge, RTC Branch 63, Bayawan City. Complainants Banny Bucad and Marichu Bucad; respondent Jun-Jun Garabato; Legal Researcher Erla Lajot Roco; Atty. Victoriano D. Alabastro, counsel for the accused and Deputy City Prosecutor Lemuel Nacita were all present.

In this transcript, it revealed that Mr. Banny Bucad was arrested as a coordinator of "swertres" or illegal gambling. After he posted a bond, Mr. Edselbert "Jun-Jun" Garabato approached and convinced him that since he might suffer a long term penalty of imprisonment, it is better for him to plead guilty to a lesser offense of a bettor instead of a coordinator. Convinced, he nodded. However, Edselbert "Jun-Jun" Garabato informed him that to make the same possible, he should pay ten thousand pesos *(₱10,000.00)* because he is going to give his companion in court. (See page 5, TSN, taken on October 23, 2013).

Two (2) days thereafter, Mr. Banny Bucad gave to the respondent Edselbert "Jun-Jun" Garabato the amount of three thousand pesos *(₱3,000.00)* as partial payment. Wanted to collect the remaining seven thousand pesos *(₱7,000.00)*, respondent kept texting and calling Banny Bucad and Marichu Bucad where some of the text messages were saved and dictated during the hearing that showed the persistent demands of respondent Edselbert "Jun-Jun" Garabato. (See pages 7 and 8, TSN taken on October 23, 2013).

Since victim Banny Bucad could not pay and before the hearing of his application for probation, Mr. Bucad approached Judge Jayme which resulted to a call for a formal meeting on October 23, 2013 at 8:30 o'clock in the morning. The meeting was fruitful because it demonstrated that respondent Edselbert "Jun-Jun" Garabato had asked money from Mr. Banny Bucad. His conduct does not deserve to stay longer in the RTC and we therefore pray that he should be dismissed from service.

In the same stenographic report, we have seen the participation of Mrs. Erla Lajot Roco x x x.

Mrs. Erla Lajot Roco as admitted by her had effectively mediated the settlement of a non-mediatable dispute between Mr. Banny Bucad and Jun-Jun Garabato by visiting Banny Bucad in his house. While Jun-Jun Garabato committed an unpardonable conduct because he already damaged or destroyed the image of the Supreme Court, Mrs. Erla Lajot Roco asked Jun-Jun Garabato to return the three thousand pesos *(Php3,000.00)*. Even though Mrs. Roco allegedly did not understand what Jun-Jun Garabato was doing, using her influence, she initiated in visiting Banny Bucad and the latter's family in their house, convinced Banny Bucad and Marichu Bucad to settle the problem and allowed Jun-Jun Garabato to return the Php3,000.00. It was Mrs. Roco's influence that convinced Jun-Jun Garabato to return the Php3,000.00 even if Banny Bucad and Jun-Jun Garabato did not see each other.[3]

On May 7, 2014, the Office of the Court Administrator *(OCA)* referred the letter to Judge Gerardo A. Paguio, Jr., Executive/ Presiding Judge, Branch 40, Dumaguete City, Negros Oriental, *(EJ Paguio, Jr.)* for a discreet investigation and report.[4]

In his Discreet Investigation and Report,[5] dated July 25, 2014, EJ Paguio, Jr. reported that he had talked to the Presiding Judge of RTC-Branch 63, Public Prosecutor, IBP President of Negros Oriental, and several practicing lawyers from whom he obtained the following information:

1. The attached transcript of stenographic notes in People v. Bucad, Criminal Case No. 1636 taken on October 23, 2013 is authentic and confirmed by Presiding Judge Ananson Jayme.
2. After the proceedings on October 23, 2013, an attempt on the life of accused Banny Bucad was made. His son Mark Bucad was killed sometime in January or February 2014.
3. After the same proceedings, Judge Ananson Jayme received death threats so serious as to necessitate a request for

[3] *Id*. at 10-14.

[4] *Id*. at 46.

[5] *Id*. at 30-32.

bodyguards from the PNP, Bayawan City. He currently fears for his life.

4. The presence of anomalous transactions committed by staff members of the Regional Trial Court of Bayawan City is known among lawyers of the IBP but no one is willing to come forward to file a complaint. A public prosecutor also received information of extortion activities committed by these personnel under investigation.

5. There is word that the personnel who are the subject of this investigation are being protected by a criminal syndicate and a powerful political figure. They provide inside information about sensitive court proceedings. Some deaths in the province have been attributed to this group.[6]

Although the witnesses were afraid to appear and sign a complaint because they feared for their lives, EJ Paguio, Jr. stated that there were others who were willing to give information provided that they would be given adequate protection. Considering the influence of the persons involved, EJ Paguio, Jr. recommended that the investigation be conducted by the National Bureau of Investigation-National Capital Region *(NBI-NCR)*. He likewise submitted the names of those who could provide additional information on the extent of the activities of the respondents.

In its 1st Indorsement,[7] dated September 9, 2014, the OCA required the respondents to comment on the anonymous complaint.

Before the respondents could file their comment, another Letter,[8] dated November 20, 2014, was received by the OCA from the complainants asserting that the respondents continued to extort money from the litigants despite advice from Judge Ananson Jayme *(Judge Jayme)*, Presiding Judge, Branch 63, RTC, Bayawan City, Negros Oriental. They further alleged the following:

---

[6] *Id*. at 31.

[7] *Id*. at 53-55.

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

1. In Civil Case 206, Ritchie Plandos Kristine Fatima Ho for Declaration of Nullity, respondent Process Server Edselbert Garabato received about ₱3,500.00 after the case was decided by Judge Jayme. He asked this amount without the knowledge of Judge Jayme;

2. In Civil Case No. 245, Desirita Dales Estrellado, Andres Estrellado for Declaration of Nullity of Marriage in the guise of borrowing money, respondent Glenn Namol had obtained a loan of almost ₱10,000.00 and respondent Edselbert Garabato had obtained a loan for more than ₱10,000.00. Despite demand they did not pay. The litigants considered the money disposed by them as given;

3. Many will testify if called for on the issue of solicitation of wine, fish and other items thereby dropping the name of Judge Jayme as the solicitor; and

4. The three *(3)* respondents have probable direct connections with criminal syndicates. They were like spotters that could cause someone to be noticed and to be ambushed to and from going to the court.[9]

The complainants requested a thorough investigation and even provided the names of those who could testify about the illegal conduct of the respondents.

On December 22, 2014, the respondents filed their Answer to the Anonymous Letter-Complaint as well as their complaint against Judge Jayme, Edgar Gantalao *(Gantalao)* and Peter Lou Tumale *(Tumale)* for falsification of their Daily Time Records *(DTR)*.[10] The respondents denied the accusations, challenged the complainants to prove their allegations with evidence and requested the conduct of an investigation. They prayed that all the persons mentioned in the complaint be required to appear so they would have an opportunity to cross-examine them.

With respect to the allegation that they solicited money from Lasconia, Garabato and Namol claimed that they personally

---

[9] *Id*. at 58.

[10] *Id*. at 64-71.

went to Danilo "Nene" Lasconia *(Lasconia)* and confronted him about the issue but he denied accusing them of soliciting money; that Lasconia informed Garabato and Namol that spouses Marilyn and Artemio Solamillo came to him and relayed the desire of Judge Jayme to personally see him and talk about the issue of the alleged extortion but Lasconia never went to see Judge Jayme; and that Marilyn Solamillo *(Marilyn),* an employee of Bayawan City, was requested by Judge Jayme to be assigned to the court to handle court records.

As to the allegation that they asked the amount of ₱6,000.00 from Leizel Aragones *(Aragones)* and her fiancé for the solemnization of their marriage, Garabato and Namol averred that the accusation was false, fabricated and malicious. They asserted that they went to the school where Aragones was teaching in order to confront her but they failed to do so as she was always unavailable.

On the charge against Garabato and Roco that they conspired to fix the case of Banny Bucad *(Bucad)*, they alleged that it was Judge Jayme who allowed him to plead guilty to a lesser offense, the penalty for which was probationable; that it was Bucad who approached Garabato and asked for his help in the preparation of his application for probation; that Bucad **gave Garabato ₱3,000.00 to cover whatever expenses that would be incurred for the preparation of his application for probation**; that during the informal meeting with Tumale, the officer-in-charge, they suggested that Garabato return the money but he should not do it personally to avoid suspicion that he was soliciting money; and that Roco volunteered to return the ₱3,000.00 to Bucad.

In the said answer, the respondents also ***enumerated several irregularities committed by Judge Jayme, Gantalao and Tumale***. The allegations were as follows:

1. That from the time Judge Jayme assumed office as the Presiding Judge of the RTC, he displayed indifference to them and preferred to hire his relatives to work in the court. They averred that Gantalao, his grandson, was employed as Clerk III of the RTC in charge of civil cases, but he was not functioning as such because he was designated to act as court encoder; that

Marilyn, an employee of Bayawan City and his niece, was assigned to perform the duties of Clerk III and had access to all court records without prior authority from the Court Administrator. The respondents requested a copy of Gantalao's application to find out whether or not he had divulged his relationship to Judge Jayme, who recommended his appointment. Nonetheless, the responsibility to reveal their relationship laid with Judge Jayme as the recommending authority.

2. That Judge Jayme did not regularly come to court on Mondays and he would leave the court for Dumaguete City on Thursdays. Judge Jayme also allowed Gantalao and Tumale to falsify their DTR, thus:

(a) On one occasion, Namol witnessed Judge Jayme directing Gantalao to fix the entries in their bundy cards to make it appear that they were present on a certain day and to show that they reported before 8:00 o'clock in the morning even though they reported for work late. Moreover, Gantalao tinkered with the bundy clock machine inside the chambers of Judge Jayme and in his presence.

(b) On October 13, 2014, the Financial Audit Team arrived in the court but they could not start the actual counting of court collections because Tumale and Gantalao were not yet in the office even at past 9:00 o'clock in the morning and they falsified the entries in their bundy clock card and in the logbook to make it appear that they reported for work on time. The respondents likewise questioned the authority of Tumale and Gantalao to keep in their possession the court collections even though they were not cash clerks and not bonded.

(c) In November 2014, Gantalao did not report for work but his DTR showed otherwise because he sent text messages to Allan Digos *(Digos)*, a locally paid employee detailed to the court, to punch his DTR for him. Digos complied out of fear that Judge Jayme would get angry at him.

3. That Judge Jayme did not attend the flag-raising and flag-lowering ceremonies in violation of Republic Act *(R.A.)* No. 891 and A.M. No. 03-802-SC;

4. That Judge Jayme and Tumale openly defied a Supreme Court circular when they failed to follow the letter of the Court Administrator denying the designation of Tumale as OIC Clerk of Court;

5. That Judge Jayme was residing in a house constructed by the City Government behind the courthouse and that the maintenance of the house and the utility bills were paid by the City Government;

6. That in Criminal Case No. 1393, entitled *People of the Philippines v. Ernesto Claro y Rebula*, a crime for rape in relation to R.A. No. 7160, Judge Jayme, upon the recommendation of the City Prosecutor, dismissed the case without setting the case for hearing and insuring the attendance of the minor victim and her guardian or representative from the DSWD; and that the case was dismissed on December 20, 2013, but the accused was ordered released only on June 2, 2014 after the BJMP warden followed up the case; and

7. That since he assumed office, Judge Jayme had not conducted any jail visitation though he made it appear in his report to the Court that he conducted jail visits.

Lastly, the respondents averred that Roco received a text message from a personnel of the Court Management Office under the Office of the Court Administrator *(CMO-OCA),* which message threatened and bothered them. The text message is hereby quoted as follows:

> Gd pm sa CMO to. napg alaman naming n hindi mo gnawa ang trabaho dyan sa rtc 63. sinabi lahat ni mr. edselbert "jun2" garabato. pati n ang involment m sa criminal syndicate. hintayin namin ang report galing s oic clerk of court para ma file n admin case para s iyo. by d way mayron k nang admin case dito. ang complainant lawyers of neg or. may nbi n naka assign for invstgation. sana malampasan mo yan. mayron kang mga admitions dito sa tsn attach. good day.[11]

---

[11] *Id*. at 70.

The Report and Recommendation of the OCA

In its September 21, 2016 Report,[12] the OCA found Garabato guilty of grave misconduct and conduct prejudicial to the best interest of the service for asking accused Bucad ₱10,000.00 for the processing of his application for probation, out of which amount he accepted ₱3,000.00 as initial payment.

The OCA also found Namol and Garabato guilty of loafing in view of their admission that they had left the court's premises without the authority of their superior for the purpose of confronting Lasconia and Aragones regarding the allegations in the complaint.

As to the liability of Roco, the OCA found her liable for simple neglect of duty for her failure to report the extortion incident involving Garabato and Bucad. It opined that Roco's act of convincing Garabato to return the ₱3,000.00 to Bucad and volunteering to return the money to him was an indication of her knowledge of Garabato's misconduct. Instead of reporting to Judge Jayme, she opted to conceal it. Thus, the OCA recommended that:

a) the instant administrative complaint be RE-DOCKETED as a regular administrative matter against respondents Process Server Edselbert Anthony A. Garabato; Court Interpreter Glenn L. Namol, and Legal Researcher Erla Joie L. Roco, all of Branch 63, RTC, Bayawan, Negros Oriental;

b) respondent Process Server Edselbert Anthony A. Garabato be found GUILTY of grave misconduct and conduct prejudicial to the best interest of the service and be meted the penalty of DISMISSAL from the service with FORFEITURE of his retirement and other benefits except accrued leave credits, and PERPETUAL DISQUALIFICATION from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution;

---

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

c) respondent Court Interpreter Glenn L. Namol be found GUILTY of loafing and be meted the penalty of SUSPENSION for six (6) months and one (1) day;

d) respondent Legal Researcher II Erla Joie L. Roco be found GUILTY of simple neglect of duty and be REPRIMANDED with a STERN WARNING that a repetition of such or any similar act shall be dealt with severely by the Court;

e) the Joint Answer/Comment dated 4 December 2014 of respondents containing their counter-charges of nepotism and falsification of DTRs against Clerk III Edgar Gantalao, Sheriff/Officer-in-Charge Peter Lou Tumale, all of Branch 63, RTC, Bayawan City, Negros Oriental, be DOCKETED as a separate administrative matter and be ASSIGNED a new OCA IPI number; and

f) Clerk III Edgar Gantalao and Sheriff/Officer-in-Charge Peter Lou Tumale be DIRECTED to SUBMIT their respective comments thereon with ten (10) days from notice.[13]

The Ruling of the Court

Liability of Garabato

The Court agrees with the recommendation of the OCA.

The act of Garabato in demanding and receiving money from Bucad who had a pending case before the courts constituted serious misconduct in office. The transcript of stenographic notes *(TSN),* taken on October 23, 2013 during the clarificatory meeting before Judge Jayme, clearly demonstrated how Garabato fell short of the standards required of him as an employee of the court. In the said meeting, it was shown that he went to Bucad, induced him to plead guilty to a lesser offense, and demanded the amount of ₱10,000.00, with the assurance that he would facilitate the approval of his plea. The following are the statements of Bucad and Marichu Bucad *(Marichu)* during the clarificatory meeting:

COURT: The herein Presiding Judge as the Executive Judge of Sta. Bayabas wanted to clarify something which refers

[13] *Id.* at 8-9.

to the case of People of the Philippines vs. Banny Bucad in Criminal Case No. 1636 where during the last time Banny Bucad approached the chamber and told the herein Presiding Judge that he was not willing to plead guilty. [I]n fact, according to him, he has defenses because according to him at the time police officers went inside his house he was not there. And therefore to him, as a layman, he understood that the raid by the police was unlawful. He does not like to plead guilty and the court was in a quandary why did he plead guilty, so I asked him and just to cut the story short, I invited Banny Bucad together with his daughter whom he refer that his daughter is willing to testify to shed light. Now, there is a story outside the court against a member of the court personnel by the name of our Process Server Junjun Garabato who allegedly approached Banny Bucad after Banny Bucad was arrested by the police officers. So, in the presence of his counsel, Atty. Victoriano Alabastro and acting Deputy City Prosecutor Lemuel Nacita, just to clear things and for the benefit of the Supreme Court, the herein Presiding Judge is conducting clarificatory meeting before Banny Bucad will appear for the hearing on the application for probation. May we ask the sheriff to interpret for us?

Q: Mr. Banny Bucad, you are the accused in Crim. Case No. 1636?

MR. BANNY BUCAD:

A: Yes.
Q: During the last hearing, this is only confirmatory, you maintained to this Presiding Judge that you ought not to plead guilty because you have legitimate defenses to your case and you told your lawyer that way, why is it that you pleaded guilty?
A: Somebody told me that I might be convicted.

Q: And you tell or inform the court who is that person who told you that you might be convicted?
A: Junjun.

Q: What is the real name of Junjun?
A: Junjun Garabato.

Q: When did it happen after you were arrested?
A: When I was already arrested that is the time that I was told.

Q: You were detained or you were out on bail?
A: When I was out on bail.

Q: And where did Junjun Garabato tell you?
A: At the road fronting our house.

Q: What is the name of that road?
A: Recto Avenue.

Q: Bayawan City?
A: Yes.

Q: What was he telling you?
A: He told me that my case being a coordinator will be considered as a bettor.

Q: Did he explain to you how it should be done?
A: He said to me that it can be done. It will be okay that I will be a bettor regarding my case.

Q: **So, his purpose of approaching you was to help you?**
A: Yes.

Q: Why did you say "pero" or but?
A: He asked me the amount of Ten Thousand Pesos (Php10,000.00).

Q: Who was present when he asked you Ten Thousand Pesos (Php10,000.00)?
A: Only the two (2) of us.

Q: No one from among the members of your family?
A: Because we were just conversing [with] each other at the side of the road.

Q: And nobody was hearing the two (2) of you who were talking?
A: Nobody.

Q: And what did you do when he asked you Ten Thousand Pesos (Php10,000.00)?
A: I told him that I am going to think it over and I would like to look for money if I can.

Q: That time, can you still remember, Mr. Bucad, what day and what time was that?
A: Monday afternoon.

Q: What happened thereafter?
A: He gave me a piece of paper in which the case was written and he said to me that's your case filed by the police.

Q: **So, what did you do after he gave you that piece of paper?**
A: So, because he asked me the amount of Ten Thousand Pesos (Php10,000.00), I look for the amount.

Q: Meaning, since you were looking for Ten Thousand Pesos (Php10,000.00) you already agreed with Junjun Garabato that you will give Ten Thousand Pesos (Php10,000.00)?
A: I gave Three Thousand Pesos (Php3,000.00) partial.

Q: Did he give any reason why you should give Ten Thousand Pesos (Php10,000.00) to him?
A: He is going to give also an amount to his companion here in court.

Q: Can you please help us, Mr. Banny Bucad, did he tell you the names of the persons or rank of the person that he is going to share with the Ten Thousand Pesos (Php10,000.00)?
A: He did not mention.

Q: You did not ask him why should that person be given that much, you did not ask him?
A: No, I did not.

Q: So, from the time that you had a talk with Junjun Garabato on the road, how many days did it happen when you give the Three Thousand Pesos (Php3,000.00)?
A: Two (2) days because he always come back to get the money.

Q: How many times did he come back to you before you give the Three Thousand Pesos (Php3,000.00)?
A: About four (4) times because I don't have any more money to give.

Q: How did he make a follow-up?
A: At the road because he commanded my nephew to get the remaining amount.

Q: [What] is the name of your nephew?
A: George Sinco.

Q: Did he ever sent you a message by way of text?
A: Yes.

Q: Can you show that? Who is holding the cellphone showing the text?

MS. MARICHU BUCAD:

A: Me

Q: Can you please identify yourself ma'am?

MS. MARICHU BUCAD:

A: Marichu Bucad.

Q: You have a text message from whom?
A: Junjun Garabato.

Q: Can you please read for the court. How many text messages did he send to you and please tell the court the date when it was texted?
A: Seven times and the other were calls.

Q: Please read the first text message.
A: "You go to the house of Atty. Ching because he might go to Dumaguete at least this time he is still around."

Q: When was that and what time?
A: August 2, 2:03 p.m.

Q: The second message.
A: "Just text me later if what will be the decision of your father. Do not forget it because maybe we will be under hot water."

Q: When was that?
A: August 6, 1:50 p.m.

Q: The third message.
A: "Day, call it is about your case."

Q: When was that?
A: August 3, 3:53 p.m.

Q: The next message.
A: "Please tell your father that I am always being scolded by my mother. Please have pity on me."

Q: What time was that, day?
A: August 8, 12:15 p.m.

Q: The fifth message.
A: "Thank you, day."

Q: Can you explain to the court if you have knowledge why he said in that text message, "Thank you, day?"
A: Because when he called me I answered him that I am just going to follow-up the money that my father will give to him that is why he texted me thank you, day.

Q: When was that?
A: August 12, 1:00 p.m.

Q: The sixth message.
A: "Day, good am. I would like to ask a favor from you and to your father that if your problem will be finished you are also going to comply your promise."

Q: When was that?
A: August 12, 10:58 a.m.

Q: What does he mean by that? What is to be complied?
A: The remaining amount of Seven Thousand Pesos (Php7,000.00).

Q: That last message.
A: "That is not a problem if you are going to fight with your case. For sure, your father will be convicted, so it is up to you if there might be something that might happen to your father just don't blame me. Ours is only a help."

Q: That was?
A: August 12, 1:09 p.m

Q: Thank you. Mr. Bucad, you pointed to Mr. Junjun Garabato who is around, is he the person you are talking about?

MR. BANNY BUCAD:

A: Yes.

Q: Junjun you heard that from Mr. Bucad and his daughter in the presence of Pros. Nacita and Atty. Alabastro, what can you say about it, is it true or false?

MR. JUNJUN GARABATO:

A: No comment, Your Honor.

Q: You need a counsel? We will continue the proceedings.
A: No, your Honor.

Q: [Did] you return the amount of Three Thousand Pesos (Php3,000.00) or not?

MR. BANNY BUCAD:

A: Yes.

Q: How did he pay you, Mr. Bucad?
A: Through Erla who gave back the money to me.

Q: A member of our court personnel?
A: Yes.

x x x x x x x x x.[14]
[Emphases supplied]

The evidence on record undeniably shows that Garabato solicited and received money from Bucad. Garabato convinced Bucad to plead guilty to a lesser offense and assured him that he could facilitate the approval of his plea in exchange of a sum of money. He gave the impression that he had the authority to influence the court on the outcome of the case. He then updated Bucad on his case and kept on following up through text messages and phone calls. In the meeting called by Judge Jayme, Bucad clearly and concisely narrated how Garabato kept in touch with him and exacted money from him with a promise of a favorable result on his case. Bucad was direct and straightforward in his assertion that Garabato went to him and threatened him that he would be facing a more serious charge unless he pleaded guilty to a lesser offense. For fear that he would be convicted of a more serious offense, Bucad agreed to the offer and initially gave ₱3,000.00. Garabato accepted the ₱3,000.00 and made him promise to pay the remaining ₱7,000.00 after a favorable outcome of the case.

Garabato's alibi that the money he received would be used for the expenses that would be incurred in the filing of Bucad's application for probation was a ludicrous defense. In the case of *Villahermosa, Sr. v. Sarcia*,[15] the Court explicitly stated that

---

[14] *Id.* at 16-24.

[15] 726 Phil. 408, 416-417 (2014).

"[t]he sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee." The Court further wrote:

> The Code of Conduct for Court Personnel requires that court personnel avoid conflicts of interest in performing official duties. It mandates that court personnel should not receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the judiciary. The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved. Court personnel cannot take advantage of the vulnerability of party-litigants.
>
> x x x
>
> **There is no defense in receiving money from party-litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.**[16] [Emphasis supplied]

It must be noted that Garabato admitted all the allegations of Bucad in the meeting called by Judge Jayme. In particular, Garabato testified:

[Judge Jayme to Garabato]

Q: So, what can you say now whether it is true or not. You said that you have no comment. For the record, since you have no comment, is it true or not true referring to the allegations that we heard now?
A: I will admit that, Your Honor.

Q: All of it are true?
A: All of it.[17] [Emphases supplied]

Time and again, the Court has always reminded all employees of the Judiciary, from judges to the most junior clerks, to conduct themselves in a manner exemplifying integrity, honesty and

---

[16] *Id.* at 416-417.

[17] *Rollo*, p. 26.

uprightness.[18] Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for, and trust, in the Judiciary.[19]

Section 2, Canon I of the Code of Conduct for Court Personnel specifically prohibits all court employees from soliciting or accepting any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions. They are likewise forbidden from soliciting or accepting 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 his official duties.

In the case of *Calabines v. Gnilo,*[20] the Court wrote that court employees had no business meeting with parties and litigants or their representatives and that such a brazen and outrageous betrayal of public trust would not go unsanctioned. In performing their duties and responsibilities, court personnel 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. Indeed, any conduct they exhibit tending to diminish the faith of the people in the Judiciary will not be condoned.[21]

In the case of *OCA v. Panganiban*,[22] the respondent was a process server who received the amount of ₱4,000.00 from a party-litigant purportedly for the payment of a surety bond. The Court held that the respondent's act of receiving money from a litigant, no matter how nominal the amount, constituted grave misconduct in office. In this case, the respondent was meted the penalty of dismissal from the service.

---

[18] *Judge Santos, Jr. v. Mangahas,* 685 Phil. 814, 821 (2012).

[19] *Villaros v. Orpiano,* 459 Phil. 1, 6-7 (2003).

[20] 547 Phil. 174, 204 (2007).

[21] *Agustin v. Mercado,* 555 Phil. 186, 193 (2007).

[22] A.M. No. P-04-1916, 583 Phil. 500 (2008).

Also, in the case of *Alano v. Sahi*,[23] the Court wrote that the act of soliciting and receiving bribe money from party litigants on the pretext that they would obtain a favorable judgment undoubtedly diminished the respect and regard of the people for the court and its personnel. Such practice constitutes grave misconduct punishable by dismissal even for the first offense.

Liability of Namol

With respect to Namol, the Court agrees with the findings of the OCA except on the penalty.

Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. They must exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty; it is a mission.[24]

In the present case, Namol and Garabato admitted that after they had received the letter requiring them to comment on the April 14, 2014 anonymous letter-complaint, they left the court premises on different occasions and went to the house of Lasconia and to the school where Aragones was teaching in order to confront them regarding the allegations in the complaint. As court employees, Namol and Garabato are reminded to observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the Judiciary. [25] As such, they must, at all times, strictly observe official time to inspire public respect for the justice system.[26]

Under Section 52 (A)(17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936, loafing or

---

[23] A.M. No. P-14-325290, 738 SCRA 261, October 14, 2014.

[24] *Concerned Litigants v. Araya, Jr.,* 542 Phil. 8, 18 (2007).

[25] *Lopena v. Saloma,* 567 Phil. 217, 225-226 (2008).

[26] *Re: Unauthorized Absences from the Post of Pearl Marie N. Icamina,* 588 Phil. 442, 450 (2008).

frequent unauthorized absences from duty during regular office hours is a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Under the circumstances, the penalty of one (1) month suspension is proper. With respect to Garabato, however, considering that he was found administratively liable for two offenses, the penalty to be imposed should correspond to the most serious charge and the lighter offense, which is loafing, shall be considered an aggravating circumstance.[27]

Liability of Roco

In the case of Roco, the finding of the OCA is well-taken. He should be held liable for simple neglect of duty which is defined as "the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference."[28]

Roco simply failed to exercise reasonable diligence and prudence when she failed to report the illegal activity of Garabato to her superior, the Branch Clerk of Court, or directly to the Judge. The Court quotes with approval the findings of the OCA:

> x x x The TSN of the hearing on 23 October 2013 in Criminal Case No. 1636 discloses that it was respondent Roco who convinced respondent Garabato to return the Php 3,000.00 to accused Bucad. As a matter of fact, she volunteered to return the amount to the Bucad family and tried to convince the latter to settle their differences with respondent Garabato. Notably, this is a positive indication that respondent Roco was aware of respondent Garabato's misconduct, but she failed to immediately call the attention of Judge Jayme. She opted to keep her silence and to conceal such wrongdoing, and instead attempted to fix the brewing controversy between the parties. As the records show, Judge Jayme only learned of the subject misconduct from accused Bucad when the latter reported the matter to him in his chambers.[29]

---

[27] Revised Rules on Administrative Cases in the Civil Service, Section 52(A) (1), Rule IV.

[28] *Court of Appeals v. Manabat, Jr.,* 676 Phil. 157, 164 (2011).

[29] *Rollo*, p. 7.

The charge against Garabato was a serious accusation that should not have been taken lightly. Roco should have done more than merely talk to the parties and instruct Garabato to return the ₱3,000.00 to Bucad. She should have reported the matter to her superior so the appropriate steps could have been taken and the appropriate disciplinary measure could be imposed, if warranted.

The inaction of Judge Jayme

Section 3, Canon 2 of the New Code of Judicial Conduct provides:

> Section 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

Pursuant to said section, Judge Jayme should have caused the investigation of the unprofessional conduct committed by the court personnel under his supervision. When Judge Jayme came to know of the extortion committed by Garabato against Bucad, he merely called for a meeting between Garabato and the complainants. He was well aware of the extortion activity being committed within the court and yet he failed to initiate any investigation for appropriate disciplinary action against the erring employee. Hence, Judge Jayme should be required to explain why no disciplinary action should be taken against him for his failure to take the appropriate disciplinary measure against the erring court personnel.

WHEREFORE, finding Edselbert Anthony "Jun-Jun" A. Garabato, Process Server, Regional Trial Court, Branch 63, Bayawan City, Negros Oriental, **GUILTY** of Grave Misconduct, the Court orders his **DISMISSAL** from the service with **FORFEITURE** of all benefits except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporation.

Respondent Glenn Namol, Court Interpreter, Regional Trial Court, Branch 63, Bayawan City, Negros Oriental, is found

GUILTY of Loafing under Section 52 (A) (17), Rule IV of the Uniform Rules or Civil Service Commission Resolution No. 991936. He is hereby **REPRIMANDED** with a **STERN WARNING** that a repetition of the same or similar acts will warrant a more severe penalty.

Respondent Erla Joie L. Roco, Legal Researcher, Regional Trial Court, Branch 63, Bayawan City, Negros Oriental, is found **GUILTY** of Simple Neglect of Duty and is hereby **REPRIMANDED** with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

The counter complaint against Judge Ananson Jayme is hereby ordered re-docketed as a separate administrative matter.

Judge Ananson Jayme, Regional Trial Court, Branch 63, Bayawan City, Negros Oriental, is **DIRECTED** to explain why no disciplinary action should be taken against him for his inaction despite his knowledge of the illegal activity of respondent Edselbert Anthony "Jun-Jun" A. Garabato.

SO ORDERED.

Velasco, Jr. (Acting C.J.),[*] *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, Martires,* and *Tijam, JJ.,* concur.

Sereno, C.J. and *Carpio, J.,* on official leave.

Caguioa, J., on leave.

---

[*] Per Special Order No. 2450 dated June 20, 2017.

EN BANC

[G.R. No. 223244. June 20, 2017]

RHODELIA L. SAMBO and LORYL J. AVILA, *petitioners, vs.* **COMMISSION ON AUDIT, represented by Chairperson MA. GRACIA M. PULIDO TAN, Chairperson,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; LIABILITY FOR ILLEGAL EXPENDITURES; AN EXPENDITURE OF GOVERNMENT FUNDS OR USE OF GOVERNMENT PROPERTY IN VIOLATION OF LAW OR REGULATION SHALL BE THE PERSONAL LIABILITY OF THE OFFICIAL OR EMPLOYEE FOUND DIRECTLY RESPONSIBLE THEREFOR.— Presidential Decree No. 1445 spells out the rule on general liability for unlawful expenditures: x x x. Under this provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor.

2. ID.; ID.; ID.; ID.; PUBLIC OFFICIALS WHO ARE DIRECTLY RESPONSIBLE FOR, OR PARTICIPATED IN MAKING THE ILLEGAL EXPENDITURES, AS WELL AS THOSE WHO ACTUALLY RECEIVED THE AMOUNTS THEREFROM SHALL BE SOLIDARILY LIABLE FOR THEIR REIMBURSEMENT; EXCEPTION. — [S]ection 19 of COA Circular No. 94-001, the Manual of Certificate of Settlement and Balances, provides for the bases for determining the extent of personal liability: x x x. [P]ublic officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement. However, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that

recipients or payees in good faith need not refund these disallowed amounts. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them. On the part of the approving officers, they shall only be required to refund if they are found to have acted in bad faith or were grossly negligent amounting to bad faith. In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES IN THE ABSENCE OF ANY SHOWING OF BAD FAITH AND MALICE MUST FAIL IN THE PRESENCE OF AN EXPLICIT RULE THAT WAS VIOLATED.— Jurisprudence holds that, absent any showing of bad faith and malice, there is a presumption of regularity in the performance of official duties. However, this presumption must fail in the presence of an explicit rule that was violated. For instance, in *Reyna v. COA*, this Court affirmed the liability of the public officers therein, notwithstanding their proffered claims of good faith, since their actions violated an explicit rule in the Land Bank of the Philippines' Manual on Lending Operations. In the case at bar, We find that the petitioners have equally failed to make a case justifying their non-observance of existing auditing rules and regulations x x x. Petitioners failed to faithfully discharge their respective duties and to exercise the required diligence which resulted in the irregular disbursements paid to the employees whose appointments have not been approved by the CSC. Being a GOCC, QUEDANCOR is bound by civil service laws. Under the Constitution, the CSC is the central personnel agency of the government, including GOCCs. It primarily deals with matters affecting the career development, rights and welfare of government employees." In this light, the ruling of the COA Commission Proper in not appreciating good faith on the part of the petitioners must perforce be upheld.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; LIABILITY FOR ILLEGAL EXPENDITURES; THE RECEIPT OR NON-RECEIPT OF ILLEGALLY DISBURSED FUNDS IS IMMATERIAL TO THE SOLIDARY LIABILITY OF THE GOVERNMENT OFFICIALS DIRECTLY RESPONSIBLE THEREFOR.— In the case of *Silang v. COA*, We did not hold liable the rank and file employees who received the incentives on the honest belief that they are entitled to the benefits but We ruled otherwise with respect to the officers who directly participated in the negotiations pertaining to the disallowed incentives: x x x the receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of the government officials directly responsible therefor, as in the case of *Maritime Industry Authority v. COA*, where the Court held the approving officers therein who acted in bad faith as solidarity liable to return the disallowed funds, even if they never got hold of them.

5. ID.; ID.; ID.; ID.; OFFICIALS WHO ISSUED THE GUIDELINES AND AUTHORIZED THE RELEASE OF THE DISALLOWED BENEFITS ARE LIABLE FOR THE DISALLOWANCE.— [T]he argument of petitioners that they, as the approving officers, are the only ones held solidarily liable while exempting the President and COE of QUEDANCOR who made the guidelines is not true. It is explicitly stated in *(ND)* No. REG. 08-01-101 which was affirmed by the COA Commission Proper that the President and CEO as well as the Vice President of QUEDANCOR are made liable for issuing the aforesaid guidelines and authorizing the release of the aforesaid benefits. This solidary liability is in accordance with Book VI, Chapter V, Section 43 of the Administrative Code, which provides: *Liability for Illegal Expenditures.* - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

APPEARANCES OF COUNSEL

Antonio M. Ursua, Jr. for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for *certiorari*[1] under Rule 65 in relation to Rule 64 of the Rules of Court seeking to nullify Commission on Audit (*COA*) Decision No. 2015-024[2] dated January 29, 2015 of the COA partly affirming Decision No. 2010-C-005 dated May 13, 2010 of the COA Regional Office (*RO*) No. V, which partly lifted the Notice of Disallowance (*ND*) No. REG. 08-01-101[3] dated September 12, 2008 as regards the payment of benefits to several employees of Quedan and Rural Credit Guarantee Corporation (*QUEDANCOR*), Region V for the Calendar Years (*CYs*) 2006 and 2007 in the total amount of ₱94,913.15.

The factual antecedents are as follows:

QUEDANCOR is a government-owned and controlled corporation (*GOCC*) created under Republic Act No. 7393.[4] Petitioners Rhodelia L. Sambo (*Sambo*) and Loryl J. Avila (*Avila*) are the Acting Regional Assistant Vice President and Regional Accountant, respectively, of QUEDANCOR, Regional Office V.[5]

In September 12, 2008, the Audit Team Leader (*ATL*)/Resident Auditor in QUEDANCOR of COA Naga City issued ND No. REG. 08-01-101 dated September 12, 2008 disallowing

---

[1] *Rollo,* pp. 3-15.

[2] *Id*. at 16-28.

[3] *Id*. at 29-33.

[4] *Id*. at 54.

[5] *Id*. at 5.

disbursement and payments in the total amount of ₱94,913.15. The disallowed expenditures consist of benefits to several employees of QUEDANCOR for the CYs 2006 and 2007, as follows:

1. Year End Benefits (*YEB*) for CY 2007 in the amount of ₱6,815.50;
2. Medicine Reimbursements for CY 2007 in the amount of ₱53,097.65;
3. Performance Bonus (*PerB*) for CY 2007 in the amount of ₱25,000.00;
4. Productivity Incentive Benefit *(PIB*) for CY 2006 in the amount of ₱10,000.00.

The reason for the disallowance by the ATL was that the payees for the YEB, PerB and PIB are casual employees and, therefore, not entitled to receive the benefits and allowances. The appointments were merely covered by Special Orders issued by the QUEDANCOR President and Chief Executive Officer (*COE*) and were without approval of the Civil Service Commission (*CSC*). Hence, the employees' contracts of services are not governed by the CSC laws, rules and regulations. The ATL stated that the nature of the employment of the payees is in the nature of contracts of service or job orders. Being such, their employment cannot be classified as government service because there is no employer and employee relationship between them and QUEDANCOR. Hence, they are not entitled to receive the benefits enjoyed by government employees like the YEB, PerB and PIB.[6]

The following rules and regulations were cited as bases for the disallowance:

1. Item 3.2 of Budget Circular (*BC*) No. 2005-6 dated October 28, 2005 on the "*Updated Rules and Regulations on the Grant of the Year-End Bonus and Cash Gift to Government Personnel for FY 2005 and Years Thereafter*";

---

[6] *Id*. at 17.

2. Item 2.2 of BC No. 2005-07 dated December 15, 2005 on the "*Grant of Performance Bonus for FY 2005*";

3. Item 2.1.1 of National Compensation Circular (*NCC*) No. 73 dated December 27, 1994 entitled the "*Grant of Productivity Incentive Benefit for CY 1994 and Years Thereafter*."[7]

The Medicine Reimbursements were disallowed in audit in the absence of statutory authority for its grant, citing Section 84(1) of Presidential Decree (*P.D.*) 1445, otherwise known as the *Government Auditing Code of the Philippines*, which provides that revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.[8] According to the ATL, a mere Memorandum issued by the President and COE of QUEDANCOR authorizing the grant of medicine reimbursement is not the "statutory authority" contemplated by P.D. 1445.

The ND No. REG. 08-01-101 enumerates the following persons as liable for the disallowed amounts:

1. the payees;
2. petitioner Avila for certifying on the completeness and propriety of the supporting documents and the cash availability;
3. petitioner Sambo for approving the payments;
4. Federico A. Espiritu, Executive Vice-President of QUEDANCOR for issuing the following:
   (a) QUEDANCOR No. 061 dated February 8, 2008 authorizing the payees to claim 10% compensation adjustment effective July 2007 as regards the payment of YEBs;
   (b) QUEDANCOR No. 08 dated January 29, 2008 authorizing the payees to claim PerB for Fiscal Year 2007; and

---

[7] *Id.* (Emphasis ours)

[8] *Id.*

(c) QUEDANCOR No. 181 dated March 15, 2007 authorizing the payees to claim PIB for CY 2006;

5. Nelson C. Buenaflor, President and COE of QUEDANCOR for issuing QUEDANCOR Circular No. 294 dated June 3, 2004 authorizing the claim for medical reimbursement in the absence of statutory authority for the grant of the benefit.

The officers, together with the payees named in ND No. REG. 08-01-101, filed a motion for reconsideration with the ATL, but the same was denied.[9]

On February 18, 2010, petitioners and the concerned employees-payees elevated the matter to the COA Regional Director in Region V by filing a Memorandum for the appellants.[10] They argued that: (a) they are only following the policies, guidelines, letters of authority and special orders issued by their head office in the grant of the questioned benefits; (b) they are in good faith as their functions are only ministerial; (c) they have proof that they have, in fact, submitted CSC authenticated Plantilla of Casual Appointments and Contractual Appointments in the Quedancor Regional Office with attestation from the CSC.[11]

In her answer to the appeal, the ATL maintained that the disallowance was proper in its entirety and reiterated that appellants were not entitled to the subject benefits.[12]

In view of the submission of the CSC approved Plantilla of Casual Appointments by Quedancor effective September 7, 2007, the Regional Director of COA Regional Office *(RO)* V lifted the disallowance on the PerB equivalent to the pro-rated amount of ₱2,000.00 from each of the five payees, or a total of ₱10,000.00. Thus, the total disallowed amount of ₱41,815.50

---

[9] *Id.* at 6.

[10] *Id*. at 160.

[11] *Id*. at 6.

[12] *Id*. at 18.

as stated in the ND was reduced to ₱31,815.50 broken down as follows: ₱6,815.50 for YEB, ₱15,000.00 for PerB and ₱10,000.00 for PIB. The dispositive portion of Decision No. 2010-C0-005 dated May 13, 2010 states:

> **WHEREFORE**, premises considered, the disallowance appealed from is LIFTED as to the amount of ₱10,000,00 while the remaining amount of ₱84,913.15 is AFFIRMED WITH MODIFICATION in that the appellants are no longer required to refund the amount disallowed on the basis of good faith, consistent with the rulings of the Supreme Court in the cases of Ronnie H. Lumayna, et al., vs. Commission on Audit, Remedios T. Blanquera, et al. *v.* Hon. Angel C. Alcala, et al. and Home Development Mutual Fund *v.* COA.[13]

Upon automatic review,[14] the COA Commission Proper rendered a Decision dated January 29, 2015 partly approving the said Decision No. 2010-C-005 of COA RO No. V:

> Thus, this Commission agrees with the decision of the RD of COA RO No. V dated May 13, 2010, lifting the disallowance on the PerB equivalent to the pro-rated amount to which employees were entitled to receive upon submission of a copy of their appointment approved by the CSC, to wit:
>
> x x x x x x x x x
>
> However, the RD might have overlooked the name of Mr. Reinhard Arceo and included instead Ms. Meriam A. Borromeo in lifting the above disallowance. Hence, the above RD's Decision dated May 13, 2010 partially lifting the PerB is corrected as to Ms. Borromeo who shall be replaced by Mr. Arceo.
>
> On the other hand, the employees who were considered "probationary" but without the original appointment issued by the CSC were not entitled to the said benefits. Thus, the remaining disallowance in the total amount of ₱31,815.50 representing YEB (₱6,815.50), PerB (₱15,000.00) and PIB (₱10,000.00) is proper.
>
> As to the propriety of the grant of medicine reimbursements, the ATL is correct in disallowing the same for lack of legal basis.

---

[13] *Id.* at 18. (Underscoring ours)

[14] Pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the COA.

x x x x x x x x x.[15]

The decretal potion of the Decision reads:

WHEREFORE, premises considered, Commission on Audit Regional Office No. V Decision No. 2010-C-005 dated May 13, 2010 is hereby **PARTLY APPROVED.** Accordingly, the disallowance on the Performance Bonus granted to the employees who were able to submit their appointments duly approved/attested to by the Civil Service Commission, in the amount of **₱10,000.00** is hereby **LIFTED,** with the name of Ms. Meriam A. Borromeo to be replaced by Mr. Reinhard Arceo. However, the disallowance of the Year-end bonus, remaining Performance Bonus and Productivity Incentive Bonus in the total amount of **₱31,815.50** and the Medicine Reimbursements in the amount of **₱53,097.65** is **AFFIRMED**. The officers who authorized/certified/approved the payment of the disallowed benefits shall be solidarily liable for the total disallowance, but the rank-and file employees who received the benefits in good faith need not refund the amount they each received.[16]

A Motion for Reconsideration[17] dated May 11, 2015 was filed by petitioners and Atty. Renato Z. Enciso (one of the payees for the grant for medical reimbursement) but the same was denied in the Resolution dated October 15, 2015.[18]

Hence, this petition, raising the following issues:

THE RESPONDENT COMMISSION ON AUDIT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RENDERED THE DECISION DATED JANUARY 29, 2015, HOLDING THE PETITIONERS IN THEIR CAPACITIES AS THE AUTHORIZING/ CERTIFYING AND APPROVING OFFICERS SOLIDARILY LIABLE FOR THE TOTAL DISALLOWANCE.

THE RESPONDENT COMMISSION ON AUDIT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN

---

[15] *Rollo*, pp. 19-20.

[16] *Id*. at 22. (Emphasis in the original; underscoring supplied)

[17] *Id*. at 35-41.

[18] *Id*. at 7, 161.

EXCESS OF JURISDICTION WHEN IT RULED THAT ONLY THE OFFICERS WHO AUTHORIZED/CERTIFIED/APPROVED THE PAYMENT OF THE DISALLOWED BENEFITS ARE SOLIDARILY LIABLE BUT EXEMPTING FROM ANY SPECIFIC LIABILITY THE BOARD OF DIRECTORS, PRESIDENT AND CEO OF QUEDANCOR, WHO MADE THE POLICY GUIDELINES AND ISSUED THE LETTERS OF AUTHORITY AUTHORIZING THE PAYMENT OF THE DISALLOWED BENEFITS.[19]

Petitioners argue in their petition that (a) they could not be held liable for the disallowance as they are mere subordinate officers performing ministerial functions in good faith when they certified and approved the disbursements of employee benefits disallowed by the COA; and (b) it is the Policy-Makers, Board of Directors, President and CEO of QUEDANCOR, who made the circulars and guidelines for the payments of disallowed benefits, that should be held directly and primarily liable for the disallowance not the subordinate officers who merely followed it to the letter.

In the Comment[20] of respondent, it argued that petitioners failed to prove that they acted in good faith in disregarding the provisions of RA 6758[21] and Administrative Order (*AO*) 103 dated January 14, 1994 pertaining to payment of allowances. RA 6758 standardizes the salary rates of government officials and employees,[22] while AO 103 enjoins head of government

---

[19] *Id*. at 7-8.

[20] *Id*. at. 158-174.

[21] *An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes.*

[22] Section 12 of Republic Act No. 6758 provides:

Section 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind,

agencies from granting incentive benefits without prior approval of the President. Respondent averred that the blatant disregard of the petitioners (approving officers) to abide with the provisions of AO 103 overcame the presumption of good faith invoking the rulings in *Executive Director Casal v. COA,*[23] *Dr. Velasco, et al. v. COA,*[24] and *Tesda v. COA.*[25]

We dismiss the petition.

Presidential Decree No. 1445 spells out the rule on general liability for unlawful expenditures:

> Section 103. *General liability for unlawful expenditures*. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.[26]

Under this provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor.[27]

Related to the foregoing is Section 19 of COA Circular No. 94-001, the Manual of Certificate of Settlement and Balances, which provides for the bases for determining the extent of personal liability:

---

being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

[23] 538 Phil. 634, 642 (2006).

[24] 695 Phil. 226, 242 (2012).

[25] 729 Phil. 60, 76 (2014).

[26] Also found in Section 52, Chapter 9, entitled "Accountability and Responsibility for Government Funds and Property," Title I, Subtitle B, Book V of Executive Order No. 292, Series of 1987, otherwise known as the "Administrative Code of 1987."

[27] *Dr. Salva v. Chairman Carague,* 540 Phil. 279, 285 (2006).

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of (a) the nature of the allowance; (b) the duties and responsibilities of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

x x x x x x x x x

19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Clearly, therefore, public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement.[28]

However, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that recipients or payees in good faith need not refund these disallowed amounts. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them.[29]

On the part of the approving officers, they shall only be required to refund if they are found to have acted in bad faith or were grossly negligent amounting to bad faith. In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities

---

[28] *Silang v. COA,* G.R. No. 213189, September 8, 2015, 770 SCRA 113.

[29] *DAP v. Pulido Tan, et al.,* G.R. No. 203072, October 18, 2016.

of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[30]

In the present case, We take note that petitioners are not disputing the amount of disallowance which was lowered to ₱84,913.15 from the amount stated in the ND which is ₱94,913.15. They are merely arguing that they should not be held liable being merely subordinate officers who followed the guidelines issued by QUEDANCOR, as follows:

a) QUEDANCOR Authority No. 258 issued by the Executive Vice-President of QUEDANCOR authorizing "*Advance Payment of One-Half of the Amount of the Year End Bonus and Cash Gift for CY 2007*";[31]

b) QUEDANCOR Authority No. 578 dated November 22, 2007 issued by the Executive Vice-President of QUEDANCOR authorizing the payment of the "*Remaining Bonus and Cash Gift for CY 2007*";[32]

c) QUEDANCOR Authority No. 604 dated December 21, 2007 issued by the Executive Vice-President of QUEDANCOR authorizing the "*Grant of the Performance Bonus for FY 2007*";[33]

d) QUEDANCOR Authority No. 038 dated January 29, 2008 issued by the Executive Vice-President of QUEDANCOR authorizing the "*Grant of the Remaining Half of the Performance Bonus for FY 2007*";[34]

e) QUEDANCOR Authority No. 511 dated November 4, 2008 issued by the Executive Vice-President of QUEDANCOR authorizing the "*Payment of Productivity Incentive Bonus for CY 2007*";[35] and

---

[30] *Id*.

[31] *Rollo,* p. 108.

[32] *Id*. at 109.

[33] *Id*. at 110.

[34] *Id*. at 111.

[35] *Id*. at 112.

f) Circular No. 294 Series of 2004 issued by the President and COE of QUEDANCOR which provides for the "*Implementing Guidelines for Grant of Medicine Allowance for QUEDANCOR Employees.*"[36]

Jurisprudence holds that, absent any showing of bad faith and malice, there is a presumption of regularity in the performance of official duties. However, this presumption must fail in the presence of an explicit rule that was violated. For instance, in *Reyna v. COA,*[37] this Court affirmed the liability of the public officers therein, notwithstanding their proffered claims of good faith, since their actions violated an explicit rule in the Land Bank of the Philippines' Manual on Lending Operations.[38]

In similar regard, this Court, in *Casal v. COA*,[39] sustained the liability of certain officers of the National Museum who again, notwithstanding their good faith participated in approving and authorizing the incentive award granted to its officials and employees in violation of AO Nos. 268 and 29 which prohibit the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President. We held that, even if the grant of the incentive award was not for a dishonest purpose, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making the "approving officers" liable for the refund of the disallowed incentive award. We ratiocinated, thus:

> The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof. x x x.

---

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

[37] 657 Phil. 209, 225 (2011).

[38] *Delos Santos, et al. v. COA*, 716 Phil. 322, 335 (2013).

[39] *Supra* note 23, at 644. (Citation omitted)

In the case of *Dr. Velasco, et al. v. COA,*[40] the Tariff Commission granted Merit Incentive Award to its officials and employees in contravention of Presidential Administrative Order Nos. 16 and 103 which both mandate that the productivity incentive benefit should not be granted without prior approval and authorization from the President. This Court then held that:

> 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 accountable for the refund of the subject incentives which they received.

This Court applied by analogy the *Casal* and *Velasco* rulings in the case of *Tesda v. COA*,[41] wherein We held the approving officers of Technical Education and Skills Development Authority (*TESDA*) liable for the excess Extraordinary and Miscellaneous Expenses (*EME*) received by them, thus:

> In the petition filed before the Court, TESDA alleged that the various memoranda issued by the Director-General authorized the TESDA officials designated as TESDP project officers to claim EME under the TESDP Fund. TESDA did not cite a specific provision of law authorizing such EME, but claimed that its grant had been an "institutional practice," showing the lack of statutory authority to pay such EME. Despite this lack of authority for granting additional EME, the then Director-General still permitted EME in excess of the allowable amount and extended EME to officials not entitled to it, patently contrary to the 2004-2007 GAAs. x x x
>
> Accordingly, the Director-General's blatant violation of the clear provisions of the Constitution, the 2004-2007 GAAs and the COA circulars is equivalent to gross negligence amounting to bad faith. He is required to refund the EME he received from the TESDP Fund for himself. x x x.

---

[40] *Supra* note 24.

[41] *Supra* note 25, at 77-78. (Citations omitted)

In the case at bar, We find that the petitioners have equally failed to make a case justifying their non-observance of existing auditing rules and regulations, as follows:

a) Item 3.2 of Budget Circular (*BC*) No. 2005-6 dated October 28, 2005 Re "Updated Rules and Regulations on the Grant of the Year-End Bonus and Cash Gift to Government Personnel for FY 2005 and Years Thereafter" which provides that "*consultants, experts, student laborers, apprentices, laborers of contracted projects ("pakyaw"), mail contractors, those paid on piecework bases, and others similarly situated"* shall not be entitled to the one-half (½) YEB or the full YEB;

b) Item 2.2 of BC No. 2005-07 dated December 15, 2005 Re "Grant of Performance Bonus for FY 2005" which provides that "*all personnel of national government agencies including government-owned or controlled corporations (GOCCs) and government financial institutions (GFIs) whether on permanent, temporary, casual or contractual basis provided that their salaries/ wages are charged against their Personal Services allocation and who have rendered at least four (4) months of service as of November 30, 2005, are entitled to receive the Perb in the amount of Five Thousand Pesos (₱5,000.00) each."*

c) Item 2.1.1 of National Compensation Circular (*NCC*) No. 73 dated December 27, 1994 Re "Grant of Productivity Incentive Benefit (PIB) for CY 1994 and Years Thereafter" which states that *"casual, temporary and full-time contractual personnel shall refer only to those whose positions have been approved by the Department of Budget and Management and whose hiring have been approved by the Civil Service Commission."*

d) Section 84(1) of P.D. 1445 which states that "*revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority."*

Petitioners failed to faithfully discharge their respective duties and to exercise the required diligence which resulted in the irregular disbursements paid to the employees whose appointments have not been approved by the CSC. Being a GOCC, QUEDANCOR is bound by civil service laws. Under the Constitution,[42] the CSC is the central personnel agency of the government, including GOCCs. It primarily deals with matters affecting the career development, rights and welfare of government employees.[43] In this light, the ruling of the COA Commission Proper in not appreciating good faith on the part of the petitioners must perforce be upheld.[44]

Petitioners pointed out that they have sent a query dated April 23, 2007 seeking clarification and guidance from their Head Office as regards the disbursements of benefits, but failed to receive any clarification on the matter of the presumption on the regular performance of official duties unless there is a clear showing of bad faith. We note, however, that the letter is dated April 2007, while some of the checks for the disallowed benefits and allowances were issued prior to April 2007.

Furthermore, petitioners invoked the case of *Maritime Industry Authority v. COA*[45] claiming that the "officers who participated in the approval of the disallowed benefits are required to refund only the amounts received when they are found to be in bad faith or grossly negligent amounting to bad faith." This claim of petitioners is erroneous.

In the case of *Silang v. COA*,[46] We did not hold liable the rank and file employees who received the incentives on the honest belief that they are entitled to the benefits but We ruled otherwise with respect to the officers who directly participated in the negotiations pertaining to the disallowed incentives:

---

[42] Sections 2(1) and 3, Article IX-B.

[43] *National Transmission Corporation v. COA, et al.*, G.R. No. 223625, November 22, 2016.

[44] *Delos Santos, et al. v. COA*, *supra* note 38, at 338.

[45] G.R. No. 185812, January 13, 2015, 745 SCRA 300, 346-347.

[46] G.R. No. 213189, September 8, 2015, 770 SCRA 110.

Their unexplained failure in this wise, therefore, goes against their claim of good faith in the allowance and payments of the CNA Incentives, especially since the 2008 CNA Incentive had already been disallowed even prior to the approval of Ordinance No. 09-01 authorizing the release of the 2009 CNA Incentive. That they did not receive any amount from the disallowed benefits does not exculpate them from personal and solidary liability for reimbursement therefor, under the legal provisions above-quoted, as receipt of the disallowed benefits is inconsequential, absent any showing of good faith. As aptly pointed out by Associate Justice Arturo D. Brion during the deliberations on this case, the receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of the government officials directly responsible therefor, as in the case of *Maritime Industry Authority v. COA*, where the Court held the approving officers therein who acted in bad faith as solidarity liable to return the disallowed funds, even if they never got hold of them.[47]

Lastly, the argument of petitioners that they, as the approving officers, are the only ones held solidarily liable while exempting the President and COE of QUEDANCOR who made the guidelines is not true. It is explicitly stated in (*ND*) No. REG. 08-01-101[48] which was affirmed by the COA Commission Proper that the President and CEO as well as the Vice President of QUEDANCOR are made liable for issuing the aforesaid guidelines and authorizing the release of the aforesaid benefits. This solidary liability is in accordance with Book VI, Chapter V, Section 43 of the Administrative Code, which provides:

Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

---

[47] *Silang v. COA , supra*, at 130-131. (Citations omitted)

[48] *Rollo*, pp. 29-33.

WHEREFORE, premises considered, the instant petition is **DISMISSED**. The Commission on Audit Decision No. 2015-024 dated January 29, 2015 is hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr.,[*] *Leonardo-de Castro, Bersamin, del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, Martires,* and *Tijam, JJ.,* concur.

Sereno, C.J. and *Caguioa, J,* on leave.

Carpio, J., on wellness leave.

SECOND DIVISION

[A.M. No. P-16-3616. June 21, 2017]
(Formerly OCA I.P.I. No. 15-4457-P)

ATTY. PROSENCIO D. JASO, *complainant, vs.* **GLORIA L. LONDRES, Court Stenographer III, Regional Trial Court, Branch 258, Parañaque City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WILLFUL FAILURE TO PAY JUST DEBTS IS ADMINISTRATIVELY PUNISHABLE AND A GROUND FOR DISCIPLINARY ACTION; FINANCIAL DIFFICULTY IS NOT AN EXCUSE TO RENEGE ON ONE'S OBLIGATION.— The Court agrees with the OCA that Londres should be held administratively liable for her failure to pay her debts in full. Willful failure to pay just debts is administratively punishable and a ground for disciplinary action. x x x. Londres' alleged financial difficulty due to the sickness

---

[*] Acting Chief Justice, per Special Order No. 2450 dated June 20, 2017.

and untimely death of her father and sister-in-law cannot justify her non-payment of the loan for a long period of time. Financial difficulty is not an excuse to renege on one's obligation. The Court, in the case of *In re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*, stressed that: The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office. Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of onus and must at all times be characterized by, among other things, uprightness, propriety and decorum.

2. **ID.; ID.; ID.; ID.; COURT PERSONNEL ARE REMINDED TO COMPLY WITH JUST CONTRACTUAL OBLIGATIONS, ACT FAIRLY AND ADHERE TO HIGH ETHICAL STANDARDS, AS THEY ARE EXPECTED TO BE PARAGONS OF UPRIGHTNESS, FAIRNESS AND HONESTY NOT ONLY IN THEIR OFFICIAL CONDUCT BUT ALSO IN THEIR PERSONAL ACTUATIONS, INCLUDING BUSINESS AND COMMERCIAL TRANSACTIONS. —** Londres could not have borrowed money from Atty. Jaso and the latter would not have lend her money were it not for her position in the court. Her act of contracting a loan from a lawyer, who had a pending case before the court, and her subsequent failure to pay the same should not be countenanced. The Court has consistently reminded court personnel to comply with just contractual obligations, act fairly and adhere to high ethical standards, as they are expected to be paragons of uprightness, fairness and honesty not only in their official conduct but also in their personal actuations, including business and commercial transactions. Having incurred a just debt, it is Londres' moral and legal responsibility to settle it when it became due.

3. **ID.; ID.; ID.; WILLFUL FAILURE TO PAY JUST DEBTS IS A LIGHT OFFENSE WHILE THE ACT OF CONTRACTING LOANS OF MONEY OR OTHER PROPERTY FROM PERSONS WITH WHOM THE OFFICE OF THE EMPLOYEE HAS BUSINESS RELATIONS**

IS CLASSIFIED AS A GRAVE OFFENSE; PROPER IMPOSABLE PENALTY.— Under Section 46 (F) (9), Rule 10 of the Revised Rules of Administrative Cases in the Civil Service, willful failure to pay just debts is a light offense punishable by reprimand for the first offense, suspension of one (1) to thirty (30) days for the second offense, and dismissal for the third offense. On the other hand, Section 46 (A) (9) of the same Rules, classifies the act of contracting loans of money or other property from persons with whom the office of the employee has business relations as grave offenses, punishable by dismissal from the service. Considering, however, that it has not been clearly shown that Londres took advantage of her position as a stenographer to secure the loan and that this is her first offense, the penalty of suspension for a period of one (1) month is sufficient.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is an Affidavit-Complaint,[1] dated July 13, 2015, filed by Atty. Prosencio D. Jaso *(Atty. Jaso)*, against Gloria L. Londres *(Londres)*, Court Stenographer III, Regional Trial Court, Branch 258, Parañaque City *(RTC)*, for dishonesty and conduct unbecoming of a court personnel.

In his affidavit-complaint, Atty. Jaso alleged as follows:

x x x x x x x x x

B] Complainant personally knows the respondent for several years being a resident of Parañaque City and a practicing lawyer. That on the time material to this case, I have a pending case before Branch 258, RTC, Parañaque City;

C] Sometime in November 2013, respondent approached and conveyed to me [outside of the court room of Branch 258] that she has just bought a brand new Isuzu vehicle and she needs the amount of One Hundred Thousand (Php100,000.00) Pesos relative to her Application for Issuance of a Certificate of Public Convenience with the LTFRB. She promised to pay me on March 30, 2014.

[1] *Rollo,* pp. 1-4.

D] I conveyed to her that I will talk first to my wife if we have available money. Respondent made a series of calls to follow up and in the process, I asked her to come to our office in Makati City.

E] On November 27, 2013, respondent came to my office and I handed to her the amount of One Hundred Thousand (Php100,000.00) Pesos. Respondent executed a Promissory Note and issued BPI Check No. 0009119 postdated March 30, 2014. Copy of the Promissory Note and BPI Check No. 0009119 are hereto attached, marked as Annexes "A" and "B";

F] Before the check's due date, respondent called me not to deposit the same because her funds with the Bank is insufficient to cover the amount and that she will just pay me in cash. Due to her pleas, I did not deposit the check;

G] Months had elapsed and turned into years, respondent miserably failed to pay her obligation despite formal and written demands. A copy of the demand letter is hereto attached as Annex "C";

3. Respondent made several promises to pay, but up to this point in time, she failed to comply despite repeated personal demands. Respondent continued to refuse to pay a just debt.[2]

In her Comment-Affidavit,[3] Londres admitted borrowing money from Atty. Jaso but denied using her position as court stenographer in order to obtain the loan. She further denied failing to pay her obligation and submitted copies of the deposit slips to prove that she was actually paying her obligation. She averred that after obtaining the loan, she immediately paid ₱3,000.00 as part of the stipulated interest and that she had always dealt with Atty. Jaso with utmost candor and had always been honest with him about the reasons for her failure to pay her debt. According to Londres, her financial trouble was caused by the sickness of her sister-in-law, who was diagnosed with lung cancer and eventually died, and that of her father who also got sick and died on December 22, 2014.

---

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

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

In its Report,[4] dated September 9, 2016, the Office of the Court Administrator *(OCA)* found Londres guilty of violating Section 46, Rule 10 of the Revised Rules of Administrative Cases in the Civil Service which prohibits an employee from contracting loans of money or other property from persons with whom the office of the employee has business relations and Section 1, Canon 1 of the Code of Conduct for Court Personnel which prohibits court personnel from using his/her official position to secure unwarranted benefits, privileges or exemptions for themselves or others. Thus, the OCA recommended that the administrative complaint be re-docketed as a regular administrative matter and that Londres be suspended for a period of six (6) months.

The Court agrees with the OCA that Londres should be held administratively liable for her failure to pay her debts in full.

Willful failure to pay just debts is administratively punishable and a ground for disciplinary action.[5]

There is no dispute that Londres borrowed money in the amount of ₱100,000.00 from Atty. Jaso, a private practitioner appearing before the RTC. To evidence said loan, Londres executed a Promissory Note,[6] dated November 27, 2013, wherein she promised to pay the full amount on or before March 30, 2014. She even issued a postdated check[7] of the same amount, dated March 30, 2014. When the check became due, however, she asked Atty. Jaso not to deposit it because her funds were insufficient.

Londres did not deny that she had an unpaid debt to Atty. Jaso, but she insisted that she did not renege on her obligation to pay. Nonetheless, she failed to substantiate her claim. The photocopies of the three (3) deposit slips,[8] dated January 15, 2014, March 14, 2014 and May 9, 2014, amounting to ₱3,000.00 each, which she deposited under the account of Atty. Jaso and

---

[4] *Id*. at 13-15.

[5] *Catungal v. Fernandez,* 577 Phil. 170, 173 (2008).

[6] *Rollo*, p. 5.

[7] BPI Check No. 0009119, *id*. at 6.

[8] *Id*. at 12.

Eden G. Jaso, were short of what she promised to pay. Years passed and several demands had been made on her but as of the filing of this complaint, the debt remained unpaid.

Londres' alleged financial difficulty due to the sickness and untimely death of her father and sister-in-law cannot justify her non-payment of the loan for a long period of time. Financial difficulty is not an excuse to renege on one's obligation.[9] The Court, in the case of *In re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*,[10] stressed that:

> The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office. Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of onus and must at all times be characterized by, among other things, uprightness, propriety and decorum. The respondent failed to meet this exacting standard. Her actuation, although arising from a private transaction, has stained the image of her public office. Like any member of the Judiciary, the respondent is expected to be a model of fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions. Any conduct that would be a bane to the public trust and confidence reposed on the Judiciary shall not be countenanced.[11]

In this case, Londres could not have borrowed money from Atty. Jaso and the latter would not have lend her money were it not for her position in the court. Her act of contracting a loan from a lawyer, who had a pending case before the court, and her subsequent failure to pay the same should not be countenanced.

The Court has consistently reminded court personnel to comply with just contractual obligations, act fairly and adhere to high ethical

---

[9] *Tan v. Sermonia*, 612 Phil. 314, 321 (2009).

[10] 493 Phil 1 (2005).

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

standards, as they are expected to be paragons of uprightness, fairness and honesty not only in their official conduct but also in their personal actuations, including business and commercial transactions.[12] Having incurred a just debt, it is Londres' moral and legal responsibility to settle it when it became due.[13]

Under Section 46 (F) (9), Rule 10 of the Revised Rules of Administrative Cases in the Civil Service, willful failure to pay just debts is a light offense punishable by reprimand for the first offense, suspension of one (1) to thirty (30) days for the second offense, and dismissal for the third offense. On the other hand, Section 46 (A) (9) of the same Rules, classifies the act of contracting loans of money or other property from persons with whom the office of the employee has business relations as grave offenses, punishable by dismissal from the service. Considering, however, that it has not been clearly shown that Londres took advantage of her position as an stenographer to secure the loan and that this is her first offense, the penalty of suspension for a period of one (1) month is sufficient.

WHEREFORE, respondent Gloria L. Londres, Court Stenographer III, Regional Trial Court, Branch 258, Parañaque City, is found guilty of conduct prejudicial to the best interest of the service. She is hereby **SUSPENDED** for a period of one (1) month with a **WARNING** that a commission of the same or similar acts in the future shall be dealt with more severely.

Respondent is enjoined to pay her indebtedness immediately to complainant Atty. Prosencio D. Jaso.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[12] *Adtani v. Manio*, 555 Phil. 211, 212 (2007).

[13] *Reliways, Inc. v. Rosales*, 553 Phil. 711, 715 (2007).

[*] Per Special Order No. 2445 dated June 16, 2017.

THIRD DIVISION

[G.R. No. 182297. June 21, 2017]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **FE L. ESTEVES,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; EMPLOYEES COMPENSATION AND STATE INSURANCE FUND (PD NO. 626, AS AMENDED); DEATH BENEFITS; CONDITIONS IN ORDER FOR THE DEATH AS A RESULT OF A CEREBROVASCULAR ACCIDENT (CVA) TO BE COMPENSABLE; NOT PROVED.— [R]espondent failed to present sufficient evidence to establish that the death of the deceased was compensable. It is not sufficient that the fact of cerebrovascular accident (CVA) or hypertension is proven; in order to become compensable, certain conditions must be complied with. The Court explained in *Government Service Insurance System v. Calumpiano* in this wise: However, although cerebro-vascular accident and essential hypertension are listed occupational diseases, their compensability requires compliance with all the conditions set forth in the Rules. In short, both are qualified occupational diseases. For cerebro-vascular accident, the claimant must prove the following: (1) there must be a history, which should be proved, of trauma at work (to the head specifically) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry; (2) there must be a direct connection between the trauma or exertion in the course of the employment and the cerebro-vascular attack; and (3) the trauma or exertion then and there caused a brain hemorrhage. On the other hand, essential hypertension is compensable only if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability, provided that, the following documents substantiate it: (a) chest X-ray report; (b) ECG report; (c) blood chemistry report; (d) funduscopy report; and (e) C-T scan. In the instant case, the records are bereft of any evidence to establish the above conditions in order for the death as a result of a CVA to be compensable.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on Certiorari under Rule 45 filed by petitioner Government Service Insurance System (GSIS), assailing the Court of Appeals (CA) Decision dated December 13, 2007[1] and Resolution dated March 26, 2008.[2] The CA Decision reversed the ruling of the Employees' Compensation Commission (ECC) in its Decision dated April 20, 2005, denying Death Benefits to respondent Fe L. Esteves for the demise of her husband, Antonio Esteves, Sr. The ECC ruling affirmed petitioner's denial of respondent's claim.

The Facts

The facts of the case, as found by the CA, are as follows:

Antonio Esteves, Sr. was employed as a utility worker at the Gubat District Hospital (GDH), Gubat, Sorsogon, from December 1978 until the time of his death on August 5, 2000. Antonio's duties at the GDH consisted of the following: 1) prepares beds and distributes bedpans; 2) mops, scrubs, polishes furniture, and removes dust in the wards; 3) carries patients, distributes clean clothes and linens, and collects soiled ones; 4) renders personal services to patients and runs errands for nurses and doctors.

On August 5, 2000, Antonio Estevez, Sr. was rushed to the hospital due to body weakness, headache and vomiting. At the hospital, his blood pressure ranged from 170-200 mmHg to 70-200 mmHg. His blood sugar level based on the two tests conducted, ranged from

---

[1] *Rollo*, pp. 42-49. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza (now a member of this Court).

[2] *Id*. at 50-51.

10.44 mmol/l to 21.95 mmol/l, way above the normal range of 3.85 to 5.77 mmol/l.

A few hours after he was rushed to the hospital, Antonio Esteves, Sr. died. His death certificate states that the following were the causes of his death:

"Immediate cause: a. CVA, HEMORRHAGIC
Antecedent cause: b. HYPERTENSION, STAGE III
Underlying cause: c. NIDDM"

Believing that the death of her husband was work-related and compensable under P.D. No. 626, [respondent] filed a claim for death benefits with the Government Service Insurance System (GSIS).[3]

Petitioner GSIS, however, denied respondent's claim on the ground that Antonio's underlying cause of death, Non-Insulin Dependent Diabetes Mellitus, is not considered as work-related.

Aggrieved, respondent appealed to the ECC, which rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, the appealed decision is AFFIRMED and the claim is dismissed for lack of merit.[4]

In affirming the rejection of the claim, the ECC explained this way:

This Commission finds and holds that the deceased's Stroke was caused by his Diabetus Mellitus. Medical science has already established that 'in most diabetics, regardless of the type of diabetes, morphologic changes are likely to be found in:

> 'Arteries-Atherosclerosis (hardening of the inner lining of the arteries) begins to appear in most diabetics, whatever their age, within a few years of onset. x x x this may result to arterial narrowings or occlusions and ischemic injury to organs that induce aneurismal dilatation, seen most often in the aorta, with the grave potential of rupture. This large vessel disease accounts for the myocardial infarction and cerebral stroke…'(Robbins' Pathologic Basis of Disease, 6th, Ed.)

---

[3] *Id*. at 42-43.

[4] *Id*. at 43.

Medical records revealed that Antonio Esteves, Sr. had no records of consultation for Hypertension and Diabetes Mellitus. It was only at the time of his death that he was documented to have elevation in blood pressure and blood sugar. Hence, this Commission holds that Diabetes is the more significant factor of which Hypertension and Stroke are the complications. Neither can it be said that the risk of contracting the Stroke was increased by the deceased's working conditions for irrespective of those conditions, the complications could have set in.

This Commission also holds that the deceased's underlying ailment, Diabetes Mellitus, is not work-connected. The said ailment is caused by genetic factors, obesity, and overeating which are not related to the deceased's employment and working conditions. Hence, irrespective of the type of work that he had been engaged in, he could have contracted Diabetes.[5]

Unsatisfied, respondent filed an appeal with the CA which was granted in the assailed Decision dated December 13, 2007, the dispositive portion of which reads:

WHEREFORE, the petition is hereby GRANTED. The assailed Decision of the Employees' Compensation Commission (ECC) is REVERSED and SET ASIDE. The GSIS is directed to promptly pay petitioner Fe L. Esteves compensation arising from the death of her husband, Antonio Esteves, Sr., pursuant to P.D. No. 626, as amended.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration of the above Decision but was denied in the assailed Resolution dated March 26, 2008.

Hence, the instant petition.

The Issues

Petitioner raises the following issues in the instant petition:

1. Whether the Honorable Court of Appeals committed a reversible error in overturning the Decision of the ECC, which denied the claim

---

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

[6] *Id*. at 48-49.

for death benefits under P.D. No. 626, as amended, of respondent Fe Esteves due to the death of her husband, the late Antonio Esteves, Sr.

2. Whether the underlying cause of death of the late Antonio Esteves, Sr., which was Diabetes Mellitus as indicated in his death certificate, and his other ailments as merely complications of his Diabetes, may be considered compensable under P.D. No. 626, as amended.[7]

Ruling of the Court

The instant petition must be granted.

Article 194 of Presidential Decree No. 626, as amended, provides:

ART. 194. Death. (a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of the covered employee under this Title an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 hereof: Provided, However, That the monthly income benefit shall be guaranteed for five years: Provided, Further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit but not to exceed sixty months: Provided, Finally, That the minimum death benefit shall not be less than fifteen thousand pesos. (As amended by Sec. 4, P.D. 1921).

Under Section 1, Rule III of the Amended Rules on Employees' Compensation, the above provision was clarified as follows:

SECTION 1. Grounds. (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. (ECC Resolution No. 2799, July 25, 1984).

(b) For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

---

[7] *Id*. at 21.

Thus, petitioner argues that the CA erred in granting death benefits to respondent considering that the deceased employee died because of complications from his Diabetes, viz:

> The established fact that the deceased was diabetic, where hypertension and cerebrovascular diseases are scientifically proven to be its chronic complications, must not be completely disregarded and nullified by respondent's mere allegation that her husband had a very stressful job. **As evidence would prove, it was Antonio's diabetes that had directly and proximately caused his cerebrovascular disease and hypertension that led to his death**.[8] (emphasis supplied)

Petitioner argues that Diabetes Mellitus not being listed as an occupational disease under Annex "A" of the Amended Rules, the death of the deceased, thus, was not compensable and respondent not entitled to death benefits.

We disagree.

Contrary to petitioner's stance, it was not an established fact that the deceased was diabetic. While Emilio's blood sugar was elevated at the time of his death, this does not necessarily mean that he was diabetic.

The CA aptly pointed out that:

> x x x First, Antonio Esteves, Sr. had no medical history of having Diabetes Mellitus prior to his confinement. It was on one single occasion, only around the time of his death, that his blood sugar was found to be elevated. Second, per certification of the Municipal Health Officer of the Municipality of Gubat, Sorsogon, the deceased's elevated random blood sugar could have been attributed to the stress condition, and possibly the high concentrate dextrose fluids infused on him.[9] x x x

Also, respondent was able to present evidence to establish that the diagnosis that the deceased had Diabetes Mellitus was erroneous, to wit:

---

[8] *Id*. at 29.

[9] *Id*. at 47.

x x x She further insists that while the death certificate of her husband shows that the underlying cause of death was Non-Insulin Dependent Diabetes Mellitus (NIDD), the following certifications belie the said averment:

"1) Per certification of Dr. Encinas-Carino, Chief of the Gubat Hospital, the deceased has no medical records of having Diabetes Mellitus prior to his confinement. x x x

2) Dr. Garcia, the attending physician of the deceased at the time of his death and the one who signed the death certificate stated that the findings of Diabetes Mellitus prior to the death was only incidental and was probably a complication of Cerebrovascular Accident. x x x

3) Dr. Dorion, the Officer in Charge of Gubat District Hospital issued the following statements, to wit:

Certification dated May 19, 2003 x x x

'This is to certify that ANTONIO ESTEVES y FLESTADO, a deceased employee of the Gubat District Hospital did not have in his medical records, both OPD and In-Patient, any consultation referable to Diabetes Mellitus. It was on one single occasion, only around the time of his death, that his blood sugar was found to be elevated. Furthermore, this is to certify that the deceased also had one episode of PTB, in 1989, in the years that he served in this institution.'

Certification dated August 11, 2003 x x x

'This is to certify that the underlying cause of death of Antonio Esteves, Sr. y Flestado, written on the Death Certificate is without sound medical basis. The certifying officer, Dr. Edgar F. Garcia, Jr., has stated such in his certification dated January 7, 2002.

A diagnosis of Diabetes Mellitus Type II (NIDDM) can only be made with 3 separate occasions of elevated blood measurements. This does not apply to the deceased. Furthermore, Dr. Garcia, the certifying officer, did not in any way manage/handle this case, which may have inadvertently caused his diagnosis of Diabetes.'

3) Certification by the Municipal Health Officer of Municipality of Gubat, Sorsogon dated September 20, 2004 x x x, to wit:

> 'This is to certify that Mr. Antonio F. Estevez, a deceased employee of Gubat District Hospital has no medical records of having Diabetes Mellitus in the out patient as well as in the In-

> patient department. Although his hospital record, at the time of his death, showed an elevated Random Blood Sugar but this could be attributed to the stress condition, and possibly the high concentrate Dextrose fluids infused. The negative maternal and paternal Diabetic history should also be taken into consideration. I believe that from the written statements of all the attesting physicians, Diabetes Mellitus should be excluded as the primary disease that causes (sic) his death.' x x x"[10] (emphasis supplied)

Nevertheless, respondent failed to present sufficient evidence to establish that the death of the deceased was compensable. It is not sufficient that the fact of cerebrovascular accident (CVA) or hypertension is proven; in order to become compensable, certain conditions must be complied with. The Court explained in *Government Service Insurance System v. Calumpiano*[11] in this wise:

> However, although cerebro-vascular accident and essential hypertension are listed occupational diseases, their compensability requires compliance with all the conditions set forth in the Rules. In short, both are qualified occupational diseases. For cerebro-vascular accident, the claimant must prove the following: (1) there must be a history, which should be proved, of trauma at work (to the head specifically) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry; (2) there must be a direct connection between the trauma or exertion in the course of the employment and the cerebro-vascular attack; and (3) the trauma or exertion then and there caused a brain hemorrhage. On the other hand, essential hypertension is compensable only if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability, provided that, the following documents substantiate it: (a) chest X-ray report; (b) ECG report; (c) blood chemistry report; (d) funduscopy report; and (e) C-T scan.

In the instant case, the records are bereft of any evidence to establish the above conditions in order for the death as a result of a CVA to be compensable.

---

[10] *Id.* at 45-46.

[11] G.R. No. 196102, November 26, 2014, 743 SCRA 92, 101.

The CA stated that:

> x x x In the instant case, the death certificate and the affidavits of the various physicians who studied the medical records of the deceased sufficiently support petitioner's claim for death benefits. The numerous stressful tasks and physical activities that the deceased had to perform as a utility worker at the GDH contributed to the development of his illness.[12]

We disagree.

Notably, the CA does not point out the specific observations or statements in the specific certification that would establish the conditions set forth in the Amended Rules.

Nevertheless, in the very first condition provided in Annex "A" of the Amended Rules, evidence must be presented to show a history of any trauma to the head at work. There was never any evidence of this. There was never any mention of any head trauma that the deceased suffered. There being no evidence of trauma, the connection to the brain hemorrhage cannot be established.

As to his hypertension, the ECC found that he did not have any history and that it caused impairment of the function of body organs like kidneys, heart, eyes and brain. None of the medical reports had established the same.

Evidently, the death of Emilio cannot be concluded as compensable.

WHEREFORE, the instant petition is **GRANTED**. The Court of Appeals Decision dated December 13, 2007 and Resolution dated March 26, 2008 are hereby **REVERSED** and **SET ASIDE**. The Employees' Compensation Commission Decision dated April 20, 2005 is hereby **REINSTATED**.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

---

[12] *Rollo*, p. 48.

THIRD DIVISION

[G.R. No. 184464. June 21, 2017]

CINDY SHIELA COBARDE-GAMALLO, *petitioner, vs.* **JOSE ROMEO C. ESCANDOR,** *respondent.*

[G.R. No. 184469. June 21, 2017]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **JOSE ROMEO C. ESCANDOR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; OMBUDSMAN RULES OF PROCEDURE; APPEALABLE AND UNAPPEALABLE DECISIONS OF THE OMBUDSMAN; THE FILING OF A MOTION FOR RECONSIDERATION DOES NOT STAY THE IMMEDIATE IMPLEMENTATION OF THE OMBUDSMAN'S ORDER OF DISMISSAL SINCE A DECISION OF THE OMBUDSMAN IN ADMINISTRATIVE CASES SHALL BE EXECUTED AS A MATTER OF COURSE.— Section 7, Rule III of the OMB Rules of Procedure, as amended by AO No. 17 dated September 15, 2003, explicitly provides: *Section 7. Finality and execution of decision.* x x x. **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course**. x x x. It can be gleaned from the afore-quoted provision that the OMB's decisions in administrative cases may either be unappealable or appealable. The unappealable decisions are final and executory, to wit: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. The appealable decisions, on the other hand, are those falling outside the aforesaid enumeration, and may be appealed to the CA under

Rule 43 of the Rules of Court, within 15 days from receipt of the written notice of the decision or order denying the motion for reconsideration. **Section 7 is categorical in providing that an appeal shall not stop the decision from being executory, and that such shall be executed as a matter of course.** Also, Memorandum Circular (MC) No. 01, Series of 2006, of the OMB states: x x x. **The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.** Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.

2. **ID.; ID.; ID.; ID.; ID.; ID.; NO VESTED RIGHT THAT IS VIOLATED AS THE RESPONDENT IN THE ADMINISTRATIVE CASE IS CONSIDERED PREVENTIVELY SUSPENDED WHILE HIS CASE IS ON APPEAL AND, IN THE EVENT HE WINS ON APPEAL, HE SHALL BE PAID THE SALARY AND SUCH OTHER EMOLUMENTS THAT HE DID NOT RECEIVE BY REASON OF THE SUSPENSION OR REMOVAL; NO VESTED INTEREST IN AN OFFICE, OR AN ABSOLUTE RIGHT TO HOLD OFFICE.—** [I]n applying Section 7, there is no vested right that is violated as the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. To note, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Except for constitutional offices that provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. Hence, no vested right of Escandor would be violated as he would be considered under preventive suspension and entitled to the salary and emoluments that he did not receive, by reason of his dismissal

from the service, in the event that his Motion for Reconsideration will be granted or that he wins in his eventual appeal.

3. ID.; ID.; REPUBLIC ACT NO. (RA) 6770, OTHERWISE KNOWN AS "THE OMBUDSMAN ACT OF 1989"; THE COURT OF APPEALS CANNOT JUST STAY THE EXECUTION OF DECISIONS RENDERED BY THE OMBUDSMAN WHEN ITS RULES CATEGORICALLY AND SPECIFICALLY WARRANT THEIR ENFORCEMENT, ELSE THE OMBUDSMAN'S RULE-MAKING AUTHORITY BE UNDULY ENCROACHED AND THE CONSTITUTIONAL AND STATUTORY PROVISIONS PROVIDING THE SAME BE DISREGARDED. — The OMB is authorized to promulgate its own rules of procedure by none other than the Constitution, which is fleshed out in Sections 18 and 27 of Republic Act No. (RA) 6770, otherwise known as "The Ombudsman Act of 1989" empowering the OMB to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties" and to accordingly amend or modify its rules as the interest of justice may require. With that, the CA cannot just stay the execution of decisions rendered by the OMB when its rules categorically and specifically warrant their enforcement, else the OMB's rule-making authority be unduly encroached and the constitutional and statutory provisions providing the same be disregarded.

APPEARANCES OF COUNSEL

Joan Dymphna G. Saniel for petitioner Cindy Gamallo.

Alvarez Nuez Galang Espina & Lopez for respondent J.R.C. Escandor.

D E C I S I O N

VELASCO, JR., *J.*:

Challenged in these consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court are the Decision[1]

[1] *Rollo* (G.R. No. 184464), pp. 80-86. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

and the Resolution[2] dated March 25, 2008 and August 28, 2008, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 02886.

These two cases arose from an administrative complaint for Violation of Republic Act No. 7877 (Anti-Sexual Harassment Act of 1995) filed by Cindy Sheila Cobarde-Gamallo (Cobarde-Gamallo), a contractual employee of the National Economic Development Authority, Regional Office No. 7 (NEDA 7), for the UNICEF-assisted Fifth Country Program for Children (CPC V), against Jose Romeo C. Escandor (Escandor), Regional Director of NEDA 7, before the Office of the Deputy Ombudsman for the Visayas (OMB-Visayas), docketed as OMB-V-A-04-0492-I.

In a Decision dated March 21, 2007, there being substantial evidence, the OMB-Visayas, through Graft Investigation and Prosecution Officer II Cynthia C. Maturan-Sibi, adjudged Escandor guilty of grave misconduct and meted him with the penalty of dismissal from the service with all its accessory penalties.[3] This OMB-Visayas Decision was later approved by the then Ombudsman Ma. Merceditas N. Gutierrez (Gutierrez) on June 14, 2007. Pursuant to Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order (AO) No. 17,[4] the Office of the Ombudsman (OMB) issued on even date an Order directing the implementation of the aforesaid Decision, particularly Escandor's dismissal from

---

[2] *Id*. at 115-116. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Francisco P. Acosta and Franchito N. Diamante.

[3] *Id*. at 107.

[4] SEC. 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.

the service, through the then Director General/Secretary of NEDA Romulo L. Neri (Neri).[5]

Aggrieved, Escandor went to the CA via a Petition for Certiorari (with application for Temporary Restraining Order and Preliminary Injunction) under Rule 65 of the Rules of Court, seeking to set aside, reverse and declare null and void the OMB Order dated June 14, 2007 directing the immediate implementation and execution of the OMB-Visayas Decision dated March 21, 2007 (approved on June 14, 2007) dismissing him from the service.[6] In support of his petition, Escandor claimed that he timely moved for reconsideration of the said Decision; thus, it would be premature for the OMB and the NEDA to dismiss him from the service.[7] Escandor also cited several rulings[8] of this Court to sustain his position that the penalty of dismissal cannot be immediately executed pending any appeal or motion for reconsideration. Lastly, Escandor sought the nullification of Section 7, Administrative Order No. 17 of the OMB for being allegedly contrary to this Court's ruling in the cases cited by him.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer.

[5] *Rollo* (G.R. No. 184464), p. 81.

[6] *Id*. at 14-55.

[7] *Id*. at 82.

[8] *Office of the Ombudsman v. Laja, et al.*, G.R. No. 169241, May 2, 2006, 488 SCRA 574; *Laxina v. Office of the Ombudsman, et al.*, G.R. No. 153155, September 30, 2005, 471 SCRA 542; *Lopez v. Court of Appeals, et al.*, 438 Phil. 351 (2002); *Lapid v. Court of Appeals, et al.*, G.R. No. 142261, June 29, 2000, 334 SCRA 738.

Finding merit in Escandor's petition, the CA, in its now assailed Decision dated March 25, 2008, partly granted the same, and, thus, enjoined Ombudsman Gutierrez and Secretary Neri from executing the Decision dated March 21, 2007, as well as the Order dated June 14, 2007, in OMB-V-A-04-0492-I until after the said Decision becomes final and executory. The CA held that there are good grounds to prevent Ombudsman Gutierrez and Secretary Neri from enforcing the Decision dated March 21, 2007, as it has not yet become final and executory considering the pendency of Escandor's Motion for Reconsideration thereof. The CA based its Decision from the same cases cited by Escandor in his petition where this Court declared that penalties other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, cannot be immediately executed pending any appeal or motion for reconsideration. With these, the CA considered it grave abuse of discretion to insist Escandor's dismissal from the service despite the unequivocal pronouncements of this Court on the matter and Escandor's pending motion for reconsideration with the OMB. The CA, however, declined to nullify Section 7, Administrative Order No. 17 of the OMB.[9]

Cobarde-Gamallo, Ombudsman Gutierrez and Secretary Neri sought reconsideration of the aforesaid CA Decision but it was denied for lack of merit in the now questioned CA Resolution dated August 28, 2008.

Hence, these consolidated Petitions.

Both Cobarde-Gamallo and the OMB insist that the CA committed an error of law in enjoining the immediate implementation of the Decision dated March 21, 2007 despite the clear provision of Section 7, Article III, of the OMB Rules of Procedure, as amended, that decisions, resolutions and orders of the OMB are immediately executory even pending appeal. They also argue that the CA's reliance on this Court's rulings in *Office of the Ombudsman v. Laja, et al.*, *Laxina v. Office of the Ombusdman, et al.*, *Lopez v. Court of Appeals, et al.*, and

---

[9] *Rollo* (G.R. No. 184464), pp. 82-85.

Lapid v. Court of Appeals, et al.,[10] is likewise an error of law as these cases have already been superseded by the ruling in *Buencamino v. Court of Appeals, et al.*,[11] where this Court declared that Section 7, Rule III of the OMB Rules of Procedure, was already amended by AO No. 17, where it is categorically stated that the appeal shall not stop the decisions of the OMB from being immediately executory.

On the contrary, Escandor maintains the correctness of the CA's ruling enjoining the immediate execution of the Decision dated March 21, 2007. Escandor believes that the amendment of Section 7, Rule III of the OMB Rules of Procedure by AO No. 17 cannot overturn the doctrinal pronouncements in *Lapid*, *Laxina, Lopez* and *Laja* that penalties other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary cannot be immediately executed pending any appeal or motion for reconsideration. Escandor also holds that the immediate implementation and execution of the order of dismissal pursuant to AO No. 17 deprive him of his rights without due process of law.

Given the foregoing arguments of the parties, the sole issue that must be addressed in these consolidated petitions is whether the OMB's Decision and Order of Dismissal against Escandor can be immediately implemented despite the pendency of his Motion for Reconsideration and/or Appeal.

This Court rules in the affirmative.

The issue presented in these consolidated petitions is not novel. In fact, it has long been settled in a number of cases, to wit: *Office of the Ombudsman v. Samaniego*,[12] *Villaseñor, et al. v. Ombudsman, et al.*,[13] and *The Office of the Ombudsman v. Valencerina*,[14] stating that the OMB's decision, even if the penalty

---

[10] *Supra* note 8.

[11] G.R. No. 175895, April 12, 2007, 520 SCRA 797.

[12] G.R. No. 175573, October 5, 2010, 632 SCRA 140.

[13] G.R. No. 202303, June 4, 2014.

[14] G.R. No. 178343, July 14, 2014.

imposed is dismissal from the service, is immediately executory despite the pendency of a motion for reconsideration or an appeal and cannot be stayed by mere filing of them.

Section 7, Rule III of the OMB Rules of Procedure, as amended by AO No. 17 dated September 15, 2003, explicitly provides:

> *Section 7. Finality and execution of decision.*— Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
>
> **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal**.
>
> **A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course**. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (emphases supplied)

It can be gleaned from the afore-quoted provision that the OMB's decisions in administrative cases may either be unappealable or appealable. The unappealable decisions are final and executory, to wit: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. The appealable decisions, on the other hand, are those falling outside the aforesaid enumeration, and may be appealed to the CA under Rule 43 of the Rules of Court, within 15 days from receipt of the written

notice of the decision or order denying the motion for reconsideration. **Section 7 is categorical in providing that an appeal shall not stop the decision from being executory, and that such shall be executed as a matter of course**.[15]

Also, Memorandum Circular (MC) No. 01, Series of 2006, of the OMB states:

> Section 7, Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."
>
> In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.
>
> **The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions**. (emphases supplied.)

Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.[16]

Further, in applying Section 7, there is no vested right that is violated as the respondent in the administrative case is

---

[15] *Villaseñor, et al. v. Ombudsman, et al.*, *supra* note 13.

[16] *Id*.

considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.[17] To note, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Except for constitutional offices that provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.[18] Hence, no vested right of Escandor would be violated as he would be considered under preventive suspension and entitled to the salary and emoluments that he did not receive, by reason of his dismissal from the service, in the event that his Motion for Reconsideration will be granted or that he wins in his eventual appeal.

Now, as regards the earlier pronouncements in *Lapid*, *Laxina, Lopez* and *Laja* that penalties other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary cannot be immediately executed pending any appeal or motion for reconsideration, which relied upon by both Escandor and the CA, this Court explained in *The Office of the Ombudsman v. Valencerina*,[19] thus:

x x x the previous ruling in *Lapid v. CA* (as quoted in *Lopez v. CA* and *OMB v. Laja*) wherein the Court, relying on the old OMB Rules of Procedure, *i.e.*, Administrative Order No. 7 dated April 10, 1990, had opined that "the fact that the [Ombudsman Act] gives parties the right to appeal from [the OMB's] decisions should generally carry with it the stay of these decisions pending appeal," cannot be successfully invoked by Valencerina in this case for the reason that **the said pronouncement had already been superseded by the more recent ruling in *Buencamino v. CA*** (Buencamino). **In *Buencamino,* the Court applied the current OMB Rules of Procedure, *i.e.*,**

---

[17] *Belmonte, et al. v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers, et al.*, G.R. No. 197665, January 13, 2016, citing *Villaseñor, et al. v. Ombudsman, et al.*, *id*; *Office of the Ombudsman v. De Chavez, et al.*, G.R. No. 172206, July 3, 2013, citing *Facura v. Court of Appeals*, G.R. No. 184263, February 16, 2011, 643 SCRA 428.

[18] *Villaseñor, et al. v. Ombudsman, et al.*, *id.*

[19] *Supra* note 14.

Administrative Order No. 17 dated September 15, 2003, which were already in effect at the time the CA assailed Resolutions dated June 15, 2006 and April 24, 2007 were issued, and, hence, governing x x x. (emphases supplied)

Having been superseded by this Court's recent rulings declaring that the OMB's decisions, resolutions and orders are immediately executory pending motion for reconsideration or appeal, it is, therefore, an error on the part of the CA to still rely on those old rulings and make them its bases in granting Escandor's writ of certiorari and enjoining the OMB from implementing its Decision and Order dismissing Escandor from the service. Notably, the assailed CA Decision and Resolution were rendered in 2008 while the ruling in *Buencamino* was made in 2007 and the amendments to the OMB Rules of Procedure stating that the OMB's decisions, resolutions and orders are immediately executory pending appeal were already in effect as early as 2003. Yet, the CA still enjoined the implementation of the OMB Decision and Order on the ground that the same were not yet final and executory as Escandor has pending motion for reconsideration before the OMB. This is a clear error on the part of the CA, which this Court now corrects.

As a final note. The OMB is authorized to promulgate its own rules of procedure by none other than the Constitution, which is fleshed out in Sections 18 and 27 of Republic Act No. (RA) 6770, otherwise known as "The Ombudsman Act of 1989" empowering the OMB to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties" and to accordingly amend or modify its rules as the interest of justice may require. With that, the CA cannot just stay the execution of decisions rendered by the OMB when its rules categorically and specifically warrant their enforcement, else the OMB's rule-making authority be unduly encroached and the constitutional and statutory provisions providing the same be disregarded.[20]

---

[20] *Valencerina*, *id*.; *Samaniego*, *supra* note 12.

WHEREFORE, premises considered, these consolidated petitions are hereby **GRANTED**. The Decision dated March 25, 2008 and the Resolution dated August 28, 2008 of the CA in CA-G.R. SP No. 02886 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 189100. June 21, 2017]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **LETICIA BARBARA B. GUTIERREZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; THE OMBUDSMAN HAS LEGAL STANDING TO INTERVENE IN APPEALS FROM ITS RULINGS IN ADMINISTRATIVE CASES.— Preliminarily, the Court rules that petitioner has legal standing to intervene. x x x. In the 2008 case of *Office of the Ombudsman v. Samaniego (Samaniego),* the Court *En Banc* rendered judgment covering the decisions of the Ombudsman in administrative cases that is in tune with both *Dacoycoy* and *Mathay.* The Court ratiocinated in *Samaniego* that aside from the Ombudsman being the disciplining authority whose decision is being assailed, its mandate under the Constitution also bestows it wide disciplinary authority that includes prosecutorial powers. Hence, it has the legal interest to appeal a decision reversing its ruling, satisfying both the requirements of *Dacoycoy* and *Mathay*. x x x. As the Court ruled in *Quimbo:* The issue of whether or not the Ombudsman possesses the requisite legal interest to intervene

in the proceedings where its decision is at risk of being inappropriately impaired has been laid to rest in *Ombudsman vs. De Chavez.* In the said case, **the Court conclusively ruled that even if the Ombudsman was not impleaded as a party in the proceedings, part of its broad powers include defending its decisions before the CA.** And pursuant to Section 1 of Rule 19 of the Rules of Court, the Ombudsman may validly intervene in the said proceedings as its legal interest on the matter is beyond cavil. Thus, as things currently stand, *Samaniego* remains to be the prevailing doctrine. The Ombudsman has legal interest in appeals from its rulings in administrative cases. Petitioner could not then be faulted for filing its Omnibus Motion before the appellate court in CA-G.R. SP No. 107551.

2. ID.; ID.; ID.; INTERVENTION IS NOT A MATTER OF RIGHT, BUT IS INSTEAD ADDRESSED TO THE SOUND DISCRETION OF THE COURTS, AND IT MAY BE PERMITTED ONLY WHEN THE STATUTORY CONDITIONS FOR THE RIGHT TO INTERVENE ARE SHOWN.— Jurisprudence describes intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her, or it to protect or preserve a right or interest which may be affected by such proceedings. However, intervention is not a matter of right, but is instead addressed to the sound discretion of the courts. It may be permitted only when the statutory conditions for the right to intervene are shown. Otherwise stated, the status of the Ombudsman as a party adversely affected by the CA's assailed Decision does not automatically translate to a grant of its motion to intervene. Procedural rules must still be observed before its intervention may be allowed.

3. ID.; ID.; ID.; REQUISITES; THE MOTION FOR INTERVENTION MUST BE FILED BEFORE RENDITION OF JUDGMENT, AS INTERVENTION IS NOT AN INDEPENDENT ACTION, BUT IS ANCILLARY AND SUPPLEMENTAL TO AN EXISTING LITIGATION; THUS, WHEN THE CASE IS RESOLVED OR IS OTHERWISE TERMINATED, THE RIGHT TO INTERVENE LIKEWISE EXPIRES; RATIONALE.— Rule 19 of the Rules of Court prescribes the manner by which intervention may be sought, viz: x x x Verily, aside from (1) having legal interest in the matter in litigation; (2) having legal interest

in the success of any of the parties; (3) having an interest against both parties; (4) or being so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof, the movant must also be able to interpose the motion before rendition of judgment, pursuant to Sec. 2 of Rule 19. The period requirement is premised on the fact that intervention is not an independent action, but is ancillary and supplemental to an existing litigation. Thus, when the case is resolved or is otherwise terminated, the right to intervene likewise expires. The *raison d'etre* for imposing the period was discussed in *Ongco v. Dalisay* in the following manner: There is wisdom in strictly enforcing the period set by Rule 19 of the Rules of Court for the filing of a motion for intervention. Otherwise, undue delay would result from many belated filings of motions for intervention after judgment has already been rendered, because a reassessment of claims would have to be done. Thus, those who slept on their lawfully granted privilege to intervene will be rewarded, while the original parties will be unduly prejudiced.

4. ID.; ID.; ID.; DENIAL OF THE OMBUDSMAN'S OMNIBUS MOTION FOR INTERVENTION AFFIRMED AS THE SAME HAD BEEN FILED AFTER THE APPELLATE COURT PROMULGATED THE ASSAILED DECISION.— It is this requirement of timeliness that petitioner failed to satisfy, prompting the appellate court to issue the July 23, 2009 Resolution denying the Omnibus Motion. x x x. [T]here is no cogent reason for the Court to disturb the ruling of the CA in CA-G.R. SP No. 107551. The appellate court did not abuse its discretion and neither did it commit reversible error when it denied the Office of the Ombudsman's Omnibus Motion, having been filed after the appellate court promulgated the assailed Decision. Resultantly, the instant petition must be denied, without the necessity of delving into the merits of the substantive arguments raised.

APPEARANCES OF COUNSEL

Melgar Tria Tria & Laurente Law Office for respondent.

Laguesma Magsalin Consulta & Gastardo Law Office co-counsel for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This treats of the Petition for Review on Certiorari filed by the Office of the Ombudsman that seeks the reversal of the June 16, 2009 Decision[1] and July 23, 2009 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 107551. The adverted rulings absolved respondent Leticia Barbara B. Gutierrez (Gutierrez) from the charge of grave misconduct and denied petitioner's motion for intervention and reconsideration of the setting aside of respondent's dismissal from service.

The Facts

On October 25, 2002, the Bureau of Food and Drugs (BFAD), through its Bids and Awards Committee (BAC) composed of chairperson Christina dela Cruz and members Ma. Theresa Icabales, Rosemarie Juaño, Corazon Bartolome, and Ma. Florita Gabuna, issued an Invitation to Bid for the procurement of a Liquid Crystal Display (LCD) Projector. The said bidding was declared a failure because the price offered by the two (2) bidders, Advance Solutions and Gakken Phils. (Gakken), were higher than the recommended price of the Department of Budget and Management (DBM). Thus, on November 2, 2002, a second round of bidding was conducted, which was participated in by Linkworth International, Inc. (Linkworth). But again, the bidding was declared a failure because the price offered by Linkworth exceeded the DBM's recommended amount.[2]

Due to the failure of the biddings, the BFAD decided to enter into negotiated contracts by way of canvas and based on the end-users' preference. Thereafter, Linkworth and Gakken submitted their respective quotations and conducted product

---

[1] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Remedios A. Salazar-Fernando and Magdangal M. de Leon.

[2] *Rollo*, p. 45.

demonstrations before the BAC, the BFAD Secretariat, and the end-users: the Supply Section and the Office of the Deputy Director, National Drug Policy (NDP).[3] Upon conclusion of the demonstrations, the Deputy Director of the NDP allegedly informed the BAC that it preferred the product offered by Gakken.

On January 15, 2003, a new BAC was formed, composed of Jesusa Joyce N. Cirunay (Cirunay) as chairperson, and Leonida M. Castillo, Marle B. Koffa, Nemia T. Getes, and Emilio L. Polig, Jr. as members.[4]

Then, on July 16, 2003, the BFAD, through Gutierrez, then Director of the BFAD, issued a Notice of Award to Linkworth for three (3) units of LCD Projectors for the aggregate amount of ₱297,000, which notice the supplier received through facsimile. Further, the notice required Linkworth to signify its conformity and to post a performance bond equivalent to 5% of the total price. However, when the representative from Linkworth tried to tender the required bond in the amount of ₱14,850 on July 25, 2003, the agency refused to accept the same. Linkworth, thus, wrote to respondent asking for an explanation.[5]

Despite having acknowledged receiving the letter from Linkworth on July 31, 2003, no written response was given by respondent. Gutierrez merely informed Linkworth that the agency will investigate the matter. Linkworth then sought the assistance of a law firm to look into the anomaly, and it was only then when it found out that it was allegedly awarded the procurement project by mistake. According to respondent, it was Gakken that actually won the award for the supply as shown by the July 10, 2003 Resolution of the BAC, unanimously approved by the new BAC composition. Linkworth was then advised by Gutierrez to disregard the Notice of Award earlier made in its favor.[6] This led to the filing of administrative charges against

---

[3] *Id*. at 46.

[4] *Id*.

[5] *Id*. at 43.

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

respondent and the members of the two BACs for grave misconduct.

In her defense, respondent averred that she did not collude, as she could not have colluded, with Gakken for the supply contract since she had no participation in selecting the winning supplier. The award in favor of Gakken was due to the fact that the end-users preferred its product over that of Linkworth. And since the purchase was through negotiated contract, the product specifications and other terms and conditions of the bidding were rendered ineffective, making the end-user preference the primary selection criterion.[7] Additionally, respondent countered that affixing her signature in the Notice of Award was only a ministerial function.

Gutierrez likewise averred that the error in the procurement process was only discovered when a representative from Linkworth presented a copy of the Notice of Award and offered to post a performance bond. She then ordered the investigation of the incident, following Linkworth's complaint. As borne by the investigation, one Johnny Gutierrez was ordered to prepare the Notice of Award, but he mistakenly instructed Danilo Asuncion, the typist at the Supply Section, to address the said notice to Linkworth instead of Gakken. And when Danilo Asuncion gave Johnny Gutierrez the Notice of Award that he had prepared, the latter brought it to Cirunay, the chairperson of the second BAC, for her initials. Before affixing her initials, Cirunay asked Johnny Gutierrez if the latter cross-checked the notice of award with the July 10, 2003 Resolution, which he answered in the affirmative. The Notice of Award was then forwarded to and initialled in turn by the Officer-in-Charge of the Administrative Division before it reached respondent's desk. Relying in good faith on the initials of her subordinates, particularly the members of the BAC, respondent claims that she could not be held administratively liable for grave misconduct.[8]

---

[7] *Id*. at 74-75.

[8] *Id*. at 72-73.

Ruling of the Ombudsman

On February 27, 2006, the Office of the Ombudsman rendered a Decision finding respondent guilty of Grave Misconduct in the following wise:[9]

> **PREMISES CONSIDERED**, pursuant to Section 52 (A-3) Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondents JESUSA JOYCE N. CIRUNAY, LEONIDA M. CASTILLO, MARLE B. KOFFA, NEMIA T. GETES, EMILIO L. POLIG, JR. and LETICIA-BARBARA B. GUTIERREZ are hereby found guilty of **GRAVE MISCONDUCT** and [are] meted the corresponding penalty of **DISMISSAL FROM THE SERVICE** with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.
>
> On the other hand, respondents CHRISTINA A. DELA CRUZ, MA. THERESA ICABALES, ROSEMARIE JUANO, CORAZON BARTOLOME, MA. FLORITA GABUNA, and MA. ELENA FRANCISCO are **ABSOLVED** of the charges hurled against them.
>
> **SO ORDERED.**

In so ruling, the Ombudsman did not give credence to the defense that the Notice of Award in favor of Linkworth was vitiated by error or mistake. It deemed improbable, if not impossible, that everyone who prepared, initialled, and signed the Notice of Award would make the same mistake despite the presence or availability of the attached July 10, 2003 Resolution that allegedly declares Gakken as the awardee of the negotiated purchase.[10] The Ombudsman also found it suspicious that when a representative from Linkworth attempted to post the required performance bond on July 25, 2003, a copy of the July 10, 2003 Resolution was not presented to him right then and there.[11]

Respondent, along with the members of the second BAC, moved for reconsideration from the judgment of dismissal, but

---

[9] *Id*. at 90-91.

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

[11] *Id*. at 88.

to no avail. On September 30, 2008, the Ombudsman issued an Order, denying the recourses for lack of merit. Hence, the aggrieved parties filed their separate petitions for review before the appellate court. Respondent's appeal was docketed as CA-G.R. SP No. 107551, entitled *"Leticia Barbara B. Gutierrez vs. Linkworth International, Inc., represented by Tador L. Efann."* Petitioner was personally served a copy of respondent's petition for review.

Ruling of the Court of Appeals

Insofar as respondent is concerned, the CA, on June 16, 2009, reversed the findings of the Ombudsman, thusly:[12]

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED** and the Decision dated February 27, 2006 of the Office of the Ombudsman finding petitioner Leticia Barbara B. Gutierrez guilty of grave misconduct is **REVERSED** and **SET ASIDE**. Accordingly, the administrative complaint against her is dismissed.
>
> **SO ORDERED.**

Justifying the reversal, the appellate court noted that Linkworth failed to file its comment on the petition despite due notice;[13] that there was no showing that respondent conspired with her co-respondents; that she neither acted irregularly nor did she perform an act outside of her official functions; and that there appears to be no deliberate or conscious act on her part showing bad faith or intent to give undue advantage to Gakken.[14]

Additionally, the CA ratiocinated that as head of office, respondent is saddled with numerous documents and other papers that routinely pass her office for signature. It is, thus, not humanly possible for her to examine each and every detail in the transaction or probe every single matter, but had to rely to a reasonable extent on the good faith of her subordinates who prepare the

---

[12] *Id*. at 60.

[13] *Id*. at 52.

[14] *Id*. at 56-57.

documents.[15] Citing *Arias v. Sandiganbayan* (*Arias*),[16] the CA held that reliance in good faith by the head of office on his or her subordinates, upon whom the primary responsibility rests, absent clear proof of conspiracy, absolves the former from any liability. In this case, respondent relied on the initials of the BAC chairperson and the acting head of the administrative division when she signed the Notice of Award, and no conspiracy among them was established. Johnny Gutierrez and Danilo Asuncion even admitted to committing the mistake in the preparation of the Notice of Award.

Linkworth did not move for reconsideration of the above ruling.

Meanwhile, petitioner Ombudsman received a copy of the assailed CA Decision on June 22, 2009. Thereafter, it filed an Omnibus Motion for Intervention and for Admission of Attached Motion for Reconsideration (Omnibus Motion). Petitioner argued that under the 1997 Constitution and Republic Act No. 6770, otherwise known as the Ombudsman Act, the Ombudsman, as the mandated disciplining body with quasi-judicial authority to resolve administrative cases against public officials, has legal standing to explain, if not defend, its decisions in disciplinary cases,[17] consistent with the Court's pronouncement in *Philippine National Bank v. Garcia*,[18] *Civil Service Commission v. Dacoycoy*,[19] and *Office of the Ombudsman v. Samaniego*.[20]

Unfortunately for petitioner, the Omnibus Motion was denied on July 23, 2009 for having been filed out of time. The pertinent portion of the CA Resolution reads:

Considering that the time for intervention has already passed with the rendition by the Court of its decision on June 16, 2009 (Sec. 2,

---

[15] *Id.* at 57.

[16] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 390.

[17] *Rollo*, p. 113.

[18] G.R. No. 141246, September 9, 2002, 388 SCRA 485.

[19] G.R. No. 135805, April 29, 1999, 306 SCRA 405.

[20] G.R. No. 175573, September 11, 2008, 564 SCRA 567.

Rule 19, 1997 Revised Rules of Civil Procedure), the Omnibus Motion for Intervention and for Admission of Attached Motion for Reconsideration filed by the Office of the Ombudsman is DENIED.

Thus, the instant recourse.

Grounds for the Allowance of the Petition

Petitioner invokes the following grounds for the reinstatement of its February 27, 2006 Decision:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT TAKING COGNIZANCE OF AND NOT GRANTING THE OFFICE OF THE OMBUDSMAN'S MOTIONS FOR INTERVENTION AND RECONSIDERATION

II.

THE OFFICE OF THE OMBUDSMAN'S DECISION DATED 27 FEBRUARY 2006 FINDING RESPONDENT ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT AND THE ORDER DATED 30 SEPTEMBER 2008 DENYING RESPONDENT'S MOTION FOR RECONSIDERATION ARE IN ACCORDANCE WITH LAW AND ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.[21]

Primarily, petitioner bases its motion to intervene on the catena of cases it cited in its Omnibus Motion. It reiterates that as the constitutionally mandated disciplining body, it has the authority to defend its rulings on appeal, and that it had been allowed to do so via intervention before judicial authorities. As a party directly affected by the ruling rendered by the CA, it has sufficient legal interest to intervene, so the Ombudsman claims.[22]

More importantly, petitioner argues that its rulings were supported by substantial evidence on record. Conspiracy, according to petitioner, does not require direct evidence to be proven.[23] Here, respondent's role as a co-conspirator was

---

[21] *Rollo*, pp. 14-15.

[22] *Id.* at 16-20.

[23] *Id.* at 23.

established through her signature in the Notice of Award. The *Arias* doctrine could not exonerate respondent from liability, in view of the difference in factual milieu compared with the case at bar. The presumption that official duty has been regularly performed had been overturned since there is evidence to the contrary.[24]

In her Comment, respondent prays that the Court sustain the ruling of the CA. She discussed that the denial of the Omnibus Motion is consistent with Section 2, Rule 19 of the Rules of Court; that petitioner has no legal standing to intervene in this case in accordance with the Court's ruling in *Office of the Ombudsman v. Magno*,[25] *National Police Commission v. Mamauag*,[26] *Mathay, Jr. v. Court of Appeals*,[27] and *Pleyto v. Philippine National Police Criminal Investigation and Detection Group*;[28] that there is no valid reason to liberally apply the rules on intervention; and that even assuming arguendo that belated intervention is proper, the petition should still be denied for it failed to show any reversible error on the part of the CA.

Petitioner would reinforce its position in its Reply.

The Issue

Succinctly stated, the issue that the Court is confronted with is whether or not the appellate court erred in denying petitioner's Omnibus Motion.

The Court's Ruling

The petition is devoid of merit.

The Ombudsman has legal standing to intervene on appeal in administrative cases that it has resolved

---

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

[25] G.R. No. 178923, November 27, 2008, 572 SCRA 272.

[26] G.R. No. 149999, August 12, 2005, 466 SCRA 624.

[27] G.R. Nos. 124374, 126354 & 126366, December 15, 1999, 320 SCRA 703.

[28] G.R. No. 169982, November 23, 2007, 538 SCRA 534.

Preliminarily, the Court rules that petitioner has legal standing to intervene. Based on the citations by both parties, it would appear that jurisprudence on this point has been replete, but erratic. A survey of the Court's pertinent rulings must then be made to shed light on this conundrum.

In earlier years, an exoneration from an administrative case is akin to an acquittal in a criminal action—both results are not subject to appeal. This is brought about not by the existence of a bar in administrative cases similar to double jeopardy; rather, this is based on the basic premise that appeal is not a statutory right, but a privilege. Of relevance are Secs. 37 and 39 of Presidential Decree No. 807,[29] which then provided:

> **Section 37.** *Disciplinary Jurisdiction.*
>
> (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. x x x
>
> x x x x x x x x x
>
> **Section 39.** *Appeals.* Appeals, where allowable, **shall be made by the party adversely affected by the decision** within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. x x x (emphasis added)

In *Paredes v. Civil Service Commission*,[30] *Mendez v. Civil Service Commission*,[31] *Magpale v. Civil Service Commission*,[32] *Navarro v. Civil Service Commission and Export Processing Zone Authority*,[33] and *Del Castillo v. Civil Service*

---

[29] Providing for the Organization of the Civil Service Commission in Accordance with Provisions of the Constitution, Prescribing Its Powers and Functions and for Other Purposes, October 6, 1975.

[30] G.R. No. 88177, December 4, 1990, 192 SCRA 84.

[31] G.R. No. 95575, December 23, 1991, 204 SCRA 96.

[32] G.R. No. 97381, November 5, 1992, 215 SCRA 398.

[33] G.R. Nos. 107370-71, September 16, 1993, 226 SCRA 522.

Commission,[34] the Court has been uniform in its ruling that a decision exonerating a respondent of administrative liability is unappealable, neither by the private complainant nor by the disciplining authority. As explained in *Paredes*:[35]

> Based on the above provisions of law, **appeal to the Civil Service Commission in an administrative case is extended to the party adversely affected by the decision, that is, the person or the respondent employee who has been meted out the penalty of suspension for more than thirty days; or fine in an amount exceeding thirty days salary demotion in rank or salary or transfer, removal or dismissal from office**. The decision of the disciplining authority is even final and not appealable to the Civil Service Commission in cases where the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. Appeal in cases allowed by law must be filed within fifteen days from receipt of the decision.
>
> Here the MSPB after hearing and the submission of memoranda exonerated private respondent Amor of all charges except for habitual tardiness. The penalty was only a reprimand so that even private respondent Amor, the party adversely affected by the decision, cannot even interpose an appeal to the Civil Service Commission.
>
> As correctly ruled by private respondent, petitioner **Paredes the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose an appeal to the Civil Service Commission. In an administrative case, the complainant is a mere witness. Even if she is the Head of the Administrative Services Department of the HSRC as a complainant she is merely a witness for the government in an administrative case.** No private interest is involved in an administrative case as the offense is committed against the government. (emphasis added)

It will not be until the Court *En Banc*'s landmark ruling in the 1999 case of *Civil Service Commission v. Dacoycoy* (*Dacoycoy*), wherein the above pronouncement will be expressly overturned:

---

[34] G.R. No. 112513, February 14, 1995, 241 SCRA 317.

[35] *Supra* note 30, at 98-99.

At this point, we have necessarily to resolve the question of the party adversely affected who may take an appeal from an adverse decision of the appellate court in an administrative civil service disciplinary case. There is no question that respondent Dacoycoy may appeal to the Court of Appeals from the decision of the Civil Service Commission adverse to him. He was the respondent official meted out the penalty of dismissal from the service. On appeal to the Court of Appeals, the court required the petitioner therein, here respondent Dacoycoy, to implead the Civil Service Commission as public respondent as the government agency tasked with the duty to enforce the constitutional and statutory provisions on the civil service.

Subsequently, the Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant George P. Suan, who was merely a witness for the government. **Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court. By this ruling, we now expressly abandon and overrule extant jurisprudence that the phrase party adversely affected by the decision refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action** which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office and not included are cases where the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty days salary or when the respondent is exonerated of the charges, there is no occasion for appeal.[36] (emphasis added)

Apparently, *Dacoycoy* broadened the scope of "party adversely affected" so as to include the disciplining authority whose ruling is in question within its definition. However, this development introduced in *Dacoycoy* would be short-lived. In the same year that *Dacoycoy* was decided, the Court *En Banc* would render judgment in *Mathay, Jr. v. Court of Appeals* (*Mathay*) in the following wise:

---

[36] G.R. No. 135805, April 29, 1999, 306 SCRA 425, 436-437.

We are aware of our pronouncements in the recent case *of Civil Service Commission v. Pedro Dacoycoy* which overturned our rulings in *Paredes vs. Civil Service Commission, Mendez vs. Civil Service Commission* and *Magpale vs. Civil Service Commission.* In *Dacoycoy*, we affirmed the right of the Civil Service Commission to bring an appeal as the aggrieved party affected by a ruling which may seriously prejudice the civil service system.

The aforementioned case, however, is different from the case at bar. *Dacoycoy* was an administrative case involving nepotism whose deleterious effect on government cannot be overemphasized. The subject of the present case, on the other hand, is reinstatement.

We fail to see how the present petition, involving as it does the reinstatement or non-reinstatement of one obviously reluctant to litigate, can impair the effectiveness of government. Accordingly, the ruling in *Dacoycoy* does not apply.[37]

It would then appear that in not all administrative cases would the doctrine in *Dacoycoy* find application. On the other hand, *Mathay*, one of the cases relied upon by respondents, would pave the way for the Court's rulings in *National Police Commission v. Mamauag* (*Mamauag*)[38] and *Pleyto v. Philippine National Police Criminal Investigation and Detection Group* (*Pleyto*)[39] that would clarify the *Dacoycoy* doctrine, specifying that the government party appealing must not be the quasi-judicial body that meted out the administrative sanction, but the prosecuting body in the administrative case.

In the 2005 case of *Mamauag*, the Court held that:[40]

x x x **[T]he government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent**. **Otherwise, an**

---

[37] *Supra* note 27, at 717.

[38] *Supra* note 26.

[39] *Supra* note 28.

[40] *Supra* note 26, at 641-642.

anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared:

> To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should detach himself from cases where his decision is appealed to a higher court for review.
>
> In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies, not to litigate.

And in the 2007 ruling in *Pleyto*:[41]

> The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellants assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

---

[41] *Supra* note 28, at 549.

Later, in the 2008 case of *Office of the Ombudsman v. Samaniego (Samaniego)*,[42] the Court *En Banc* rendered judgment covering the decisions of the Ombudsman in administrative cases that is in tune with both *Dacoycoy* and *Mathay*. The Court ratiocinated in *Samaniego* that aside from the Ombudsman being the disciplining authority whose decision is being assailed, its mandate under the Constitution also bestows it wide disciplinary authority that includes prosecutorial powers. Hence, it has the legal interest to appeal a decision reversing its ruling, satisfying both the requirements of *Dacoycoy* and *Mathay*. As elucidated in the case:[43]

> The Office of the Ombudsman sufficiently alleged its legal interest in the subject matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred:
>
> > 2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision imposing upon petitioner the penalty of suspension for one (1) year, consistent with the doctrine laid down by the Supreme Court in PNB [*vs*]. Garcia x x x and CSC [*vs*]. Dacoycoy x x x; (citations omitted; emphasis in the original)
>
> In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.
>
> Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. It was in keeping with

---

[42] *Supra* note 20.

[43] *Id.* at 578-581.

its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.

x x x x x x x x x

Both the CA and respondent likened the Office of the Ombudsman to a judge whose decision was in question. This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest. What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?

Despite the *En Banc*'s clear pronouncement in *Samaniego*, seeming departures from the doctrine may be observed in the later rulings of *Office of the Ombudsman v. Magno* (*Magno*) (2008),[44] *Office of the Ombudsman v. Sison* (*Sison*) (2010),[45] and *Office of the Ombudsman v. Liggayu* (*Liggayu*) (2012).[46] Intervention by the Ombudsman was denied in these cases, citing *Mathay*, *Mamauag*, and *Pleyto* as precedents. Nevertheless, the Court would cement its position on the issue and would uphold *Samaniego* in *Office of the Ombudsman v. de Chavez* (2013)[47] and *Office of the Ombudsman v. Quimbo* (*Quimbo*) (2015).[48] As the Court ruled in *Quimbo*:

The issue of whether or not the Ombudsman possesses the requisite legal interest to intervene in the proceedings where its decision is at risk of being inappropriately impaired has been laid to rest in *Ombudsman vs. De Chavez*. In the said case, **the Court conclusively ruled that even if the Ombudsman was not impleaded as a party in the proceedings, part of its broad powers include defending**

---

[44] *Supra* note 25.

[45] G.R. No. 185954, February 16, 2010, 612 SCRA 702.

[46] G.R. No. 174297, June 20, 2012, 674 SCRA 134.

[47] G.R. No. 172206, July 3, 2013, 700 SCRA 399.

[48] G.R. No. 173277, February 25, 2015.

its decisions before the CA. And pursuant to Section 1 of Rule 19 of the Rules of Court, the Ombudsman may validly intervene in the said proceedings as its legal interest on the matter is beyond cavil.[49] (emphasis added)

Thus, as things currently stand, *Samaniego* remains to be the prevailing doctrine. The Ombudsman has legal interest in appeals from its rulings in administrative cases. Petitioner could not then be faulted for filing its Omnibus Motion before the appellate court in CA-G.R. SP No. 107551.

The period for filing a motion to intervene had already lapsed

Jurisprudence describes intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her, or it to protect or preserve a right or interest which may be affected by such proceedings.[50] However, intervention is not a matter of right, but is instead addressed to the sound discretion of the courts.[51] It may be permitted only when the statutory conditions for the right to intervene are shown. Otherwise stated, the status of the Ombudsman as a party adversely affected by the CA's assailed Decision does not automatically translate to a grant of its motion to intervene. Procedural rules must still be observed before its intervention may be allowed.

Rule 19 of the Rules of Court prescribes the manner by which intervention may be sought, viz:

Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed

---

[49] *Id*.

[50] *Mactan-Cebu International Airport Authority v. Heirs of Mioza*, G.R. No. 186045, February 2, 2011, 641 SCRA 520.

[51] *Ongco v. Dalisay*, G.R. No. 190810, July 18, 2012, 677 SCRA 232.

to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Section 2. *Time to intervene*. — The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

Verily, aside from (1) having legal interest in the matter in litigation; (2) having legal interest in the success of any of the parties; (3) having an interest against both parties; (4) or being so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof, the movant must also be able to interpose the motion before rendition of judgment, pursuant to Sec. 2 of Rule 19.

The period requirement is premised on the fact that intervention is not an independent action, but is ancillary and supplemental to an existing litigation.[52] Thus, when the case is resolved or is otherwise terminated, the right to intervene likewise expires. The *raison d'etre* for imposing the period was discussed in *Ongco v. Dalisay* in the following manner:

> There is wisdom in strictly enforcing the period set by Rule 19 of the Rules of Court for the filing of a motion for intervention. Otherwise, undue delay would result from many belated filings of motions for intervention after judgment has already been rendered, because a reassessment of claims would have to be done. Thus, those who slept on their lawfully granted privilege to intervene will be rewarded, while the original parties will be unduly prejudiced.[53]

It is this requirement of timeliness that petitioner failed to satisfy, prompting the appellate court to issue the July 23, 2009 Resolution denying the Omnibus Motion. This course of action by the CA finds jurisprudential basis in *Magno*, *Sison*, and

---

[52] *Manalo v. Court of Appeals*, G.R. No. 141297, October 8, 2001, 419 SCRA 215.

[53] *Supra* note 51, at 242.

Liggayu. It may be that in these cases that seemingly deviated from *Samaniego*, the Court erred in holding that the Ombudsman does not have legal interest to intervene in the cases. However, it would be too much of a stretch to conclude that the Court likewise erred in denying the Ombudsman's motions to intervene. A review of these cases would show that the Ombudsman prayed for the admission of its pleading-in-intervention after the CA has already rendered judgment, and despite the Ombudsman's knowledge of the pendency of the case, in clear contravention of Sec. 2, Rule 19. This substantial distinction from the cases earlier discussed justifies the denial of the motions to intervene in *Magno*, *Sison*, and *Liggayu*. As held in *Magno*:[54]

> In the instant case, the Ombudsman moved to intervene in CA-G.R. SP No. 91080 only after the Court of Appeals had rendered its decision therein. It did not offer any worthy explanation for its belated attempt at intervention, and merely offered the feeble excuse that it was not ordered by the Court of Appeals to file a Comment on Magno's Petition. Even then, as the Court has already pointed out, the records disclose that the Ombudsman was served with copies of the petition and pleadings filed by Magno in CA-G.R. SP No. 91080, yet it chose not to immediately act thereon.

And in *Sison*:[55]

> Furthermore, the Rules provides explicitly that a motion to intervene may be filed at any time **before rendition of judgment by the trial court**. In the instant case, the Omnibus Motion for Intervention was filed only on July 22, 2008, after the Decision of the CA was promulgated on June 26, 2008.
>
> In support of its position, petitioner cites *Office of the Ombudsman v. Samaniego*. That case, however, is not applicable here, since the Office of the Ombudsman filed the motion for intervention during the pendency of the proceedings before the CA.
>
> It should be noted that the Office of the Ombudsman was aware of the appeal filed by Sison. The Rules of Court provides that the

---

[54] *Supra* note 25, at 291.

[55] *Supra* note 45, at 717-718.

appeal shall be taken by filing a verified petition for review with the CA, **with proof of service of a copy on the court or agency *a quo***. Clearly, the Office of the Ombudsman had sufficient time within which to file a motion to intervene. As such, its failure to do so should not now be countenanced. The Office of the Ombudsman is expected to be an activist watchman, not merely a passive onlooker.

Likewise, in *Liggayu*, the Office of the Ombudsman only filed its Omnibus Motion for Intervention and Reconsideration after the CA promulgated its decision.

Thus, in the three cases that seemingly strayed from *Samaniego*, it can be said that under the circumstances obtaining therein, the appellate court had a valid reason for disallowing the Ombudsman to participate in those cases because the latter only moved for intervention after the CA already rendered judgment. By that time, intervention is no longer warranted.

In the same vein, there is no cogent reason for the Court to disturb the ruling of the CA in CA-G.R. SP No. 107551. The appellate court did not abuse its discretion and neither did it commit reversible error when it denied the Office of the Ombudsman's Omnibus Motion, having been filed after the appellate court promulgated the assailed Decision. Resultantly, the instant petition must be denied, without the necessity of delving into the merits of the substantive arguments raised.

WHEREFORE, premises considered, the instant Petition for Review on Certiorari is hereby **DENIED** for lack of merit. The June 16, 2009 Decision and July 23, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 107551 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 190043. June 21, 2017]

SANTOS-YLLANA REALTY CORPORATION, *petitioner, vs.* **SPOUSES RICARDO DEANG and FLORENTINA DEANG,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENT; PETITIONER MAY MOVE FOR THE IMMEDIATE EXECUTION OF JUDGMENT RENDERED AGAINST THE DEFENDANT IN AN UNLAWFUL DETAINER OR FORCIBLE ENTRY CASE.—** It is undisputed that petitioner succeeded in securing a favorable judgment in the ejectment case; therefore, it was well within its right to move for the execution of the MTC's Decision pursuant to Sec. 19, Rule 70 of the Rules of Court. The rule allows for the immediate execution of judgment in the event that judgment is rendered against the defendant in an unlawful detainer or forcible entry case, provided that certain conditions are met x x x. Petitioner clearly elected to exercise its right under the aforestated provision; thus, its move to execute the MTC judgment enjoys the disputable presumption under Sec. 3(ff), Rule 131 of the Revised Rules on Evidence that it obeyed the applicable law and rules in doing so.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; A COMPLAINT FOR DAMAGES NECESSARILY ALLEGES THAT THE DEFENDANT COMMITTED A WRONGFUL ACT OR OMISSION THAT WOULD SERVE AS BASIS FOR THE AWARD OF DAMAGES; AS SUCH, IT WAS INCUMBENT UPON COMPLAINANTS TO PROVE THAT DEFENDANT ABUSED ITS RIGHTS AND WILLFULLY INTENDED TO INFLICT DAMAGE UPON THEM BEFORE THEY CAN CLAIM DAMAGES FROM THE FORMER; CASE AT BAR. —** We have, in *Philippine Agila Satellite Inc. v. Usec. Trinidad-Lichauco,* elucidated that "a civil complaint for damages necessarily alleges that the defendant committed a wrongful act or omission that would serve as basis for the award of damages." As such, it was

incumbent upon respondents to overcome the aforestated presumption and to prove that petitioner abused its rights and willfully intended to inflict damage upon them before they can claim damages from the former. Otherwise, having the sole prerogative to move to execute the judgment, the disputable presumption that petitioner is innocent of wrongdoing against respondents prevails. A reading of the RTC's judgment shows that it was not conclusively proved that petitioner committed bad faith or connived with the sheriffs in the implementation of the Writ. Moreover, no less than the CA, in the body of its Decision, absolved petitioner from any fault and participation in the injury inflicted upon respondents by reason of the haphazard implementation of the Writ of Execution.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE OPERATIVE PART IN EVERY DECISION IS THE DISPOSITIVE PORTION OR THE *FALLO,* AND WHERE THERE IS CONFLICT BETWEEN THE *FALLO* AND THE BODY OF THE DECISION, THE *FALLO* CONTROLS, EXCEPT WHERE THE INEVITABLE CONCLUSION FROM THE BODY OF THE DECISION IS SO CLEAR AS TO SHOW THAT THERE WAS A MISTAKE IN THE DISPOSITIVE PORTION, THE BODY OF THE DECISION WILL PREVAIL.— The CA's pronouncement is manifestly incongruent with the disposition of the case as stated in the *fallo* of the assailed Decision. The Court is not unmindful of the rule that "the operative part in every decision is the dispositive portion or the *fallo,* and where there is conflict between the *fallo* and the body of the decision, the *fallo* controls. However, the rule is not without exception. Where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail. This case falls squarely under the exception. The CA's own categorical finding, as embodied and discussed in the body of the adverted decision, negates any liability on the part of petitioner to compensate respondents for the injuries they suffered due to the misconduct and culpability of Sheriffs Sicat and Pangan, for which they were accordingly administratively charged and disciplined. To hold petitioners liable for damages, despite having been categorically absolved, is manifestly unjust and inequitable. Applying the foregoing disquisition in the present case, We cannot sustain the judgment affirming petitioner's liability for damages to respondents.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; MORAL DAMAGES; CLAIM FOR MORAL DAMAGES, REQUISITES TO PROSPER.— Moral damages are awarded to enable the injured party to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action. For a claim for moral damages to prosper, the claimant must prove that: (1) *first,* there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second,* **there must be culpable act or omission factually established;** (3) *third,* the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and *(4) fourth,* the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. [T]he culpable act or omission on the part of petitioner that resulted in injury to respondents was not factually established.

5. ID.; ID.; ID.; THE AWARD OF EXEMPLARY DAMAGES IS PROPER ONLY IF PARTIES SHOWED THEIR ENTITLEMENT TO MORAL, TEMPERATE OR COMPENSATORY DAMAGES; AWARD OF EXEMPLARY DAMAGES, ATTORNEY'S FEES, AND COST OF SUIT, DELETED.— The Court likewise cannot affirm petitioner's liability for exemplary damages, attorney's fees, and cost of suit. The award of exemplary damages is proper only if respondents showed their entitlement to moral, temperate or compensatory damages; yet, similar to the moral damages claimed, respondents were not able to establish their entitlement. Anent the liability of petitioners for attorney's fees and cost of suit, the same must similarly be deleted in light of the reversal of judgment as to them.

6. ID.; ID.; ID.; UNDER THE PRINCIPLE OF *DAMNUM ABSQUE INJURIA,* THE LEGITIMATE EXERCISE OF A PERSON'S RIGHTS, EVEN IF IT CAUSES LOSS TO ANOTHER, DOES NOT AUTOMATICALLY RESULT IN AN ACTIONABLE INJURY.— [T]he execution of the MTC judgment was tainted with irregularities that resulted in damage to respondents. Nevertheless, under the principle of *damnum absque injuria,* the legitimate exercise of a person's rights, even if it causes loss to another, does not automatically result in an actionable injury. Petitioner must not bear the brunt of the sheriffs' misconduct in the absence of evidence that the latter

acted upon its instructions to ignore the rules of procedure in implementing the Writ.

APPEARANCES OF COUNSEL

Medialdea Ata Bello Guevarra & Suarez for petitioner.
Punzalan & Associates Law Offices for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This petition for review under Rule 45 of the Rules of Court seeks to reverse and set aside the June 17, 2009 Decision[1] and October 13, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 65768 entitled "*Sps. Ricardo Deang and Florentina Deang v. Santos-Yllana Realty Corp., et. al.*," which affirmed, with modification, the September 16, 1999 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 44 in Civil Case No. 98-90087, finding petitioner Santos-Yllana Realty Corporation liable for damages to the respondents spouses Ricardo Deang and Florentina Deang.

Factual Antecedents

Respondent Florentina Deang (Florentina), doing business under the name and style of "Rommel Dry Goods," is a former lessee of Stall No. H-6 at Santos-Yllana Shopping Center, which is located on Miranda Street, Angeles City, Pampanga, and owned and operated by petitioner since 1975.

Due to Florentina's failure to pay her rents and other charges due on the rented stall, petitioner filed a Complaint for Ejectment

---

[1] *Rollo*, pp. 32-47. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Martin S. Villarama, Jr. and Normandie B. Pizarro.

[2] *Id*. at 49.

[3] *Id*. at 386-404.

with Damages against respondents before the Metropolitan Trial Court (MTC) of Angeles City on August 11, 1997. The case was raffled to Branch 1 of the Angeles City MTC and docketed as Civil Case No. 97-311. On October 16, 1997, the MTC rendered a Decision based on a Compromise Agreement that the parties executed.[4]

On January 16, 1998, petitioner filed a Motion for Execution of the October 16, 1997 Decision due to Florentina's failure to comply with the terms of the Compromise Agreement. Respondents objected, alleging that the amount due to petitioner had already been paid in full. After resolving the objections, the Angeles City MTC issued an Order on February 20, 1998 granting the issuance of the Writ of Execution, and the same was accordingly issued.[5]

Respondents moved to quash the Writ of Execution on February 26, 1998. On even date, Sheriff Allen Sicat (Sheriff Sicat) of the Regional Trial Court (RTC) of Angeles City implemented the Writ of Execution and padlocked respondents' stall. The stall, however, was ordered reopened by the MTC within the same day due to the pendency of the Motion for Reconsideration.[6]

During the hearings on the Motion for Reconsideration, respondents reiterated their claim that they had already paid the rental arrearages and other fees and charges due to petitioner; hence, the Motion for Execution should be rendered moot and academic.[7] On June 3, 1998, the Angeles MTC issued an Order upholding the Writ of Execution and commanding the sheriff to immediately implement the same. Consequently, on June 5, 1998, Daniel Pangan, Sheriff III of the MTC (Sheriff Pangan), implemented the writ and padlocked respondents' stall, viz:

---

[4] *Id*. at 34.

[5] *Id*.

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

[7] *Id*. at 35.

Whereas, on June 5, 1998, the undersigned implemented the said Writ of Execution by padlocking the subject premises in question located at H-6 Santos-Yllana Shopping Center, Miranda St., Angeles City, together with the representative of the [petitioner] on the same date (June 5, 1998) the undersigned officially turned-over the subject premises to the plaintiff, duly acknowledged receipt by the plaintiff's representative, Juanita de Nucum.[8]

Aggrieved by the implementation of the Writ of Execution, respondents filed a Complaint for Damages with Prayer for Injunctive Relief against petitioner and Sheriffs Sicat and Pangan before the Manila RTC, Branch 44, alleging that the Writ of Execution was illegally implemented. They claim to have suffered damages as a result of the illegal closure of their stall since important documents, checks, money, and bank books, among others, were locked inside the stall and could not be retrieved, thereby preventing them from operating their business, and causing their business to suffer and their goodwill to be tarnished. Respondents, thus, prayed that judgment be rendered ordering petitioner to pay them ₱500,000 as actual damages, ₱250,000 as moral damages, ₱250,000 as exemplary damages, and ₱100,000 as attorney's fees, plus ₱3,000 per appearance fee per hearing.[9]

Ruling of the RTC

The trial court observed that the undue haste by which the Angeles MTC issued the Writ of Execution violated respondents' right to due process and to question the propriety of the issuance of the Writ. Consequently, it held that the enforcement of the Writ was tainted with malice and bad faith on the part of petitioner.[10] Due to the illegal closure of their business, respondents' personal properties were detained inside the stall, causing them to incur actual damages and unrealized profit derived from daily sales of ₱1,000 or a total amount of ₱500,000. Accordingly, the RTC of Manila, Branch 44 rendered a Decision,[11]

---

[8] *Id*.

[9] *Id*. at 35-36.

[10] *Id*. at 402.

[11] *Id*. at 338-356.

finding for respondents and adjudged petitioner, as well as Sheriffs Sicat and Pangan, jointly and severally liable for the damages being claimed. The trial court disposed of the case in this wise:

> WHEREFORE, in view of the foregoing, and the case having been proved by preponderance of evidence, this Court renders judgment by ordering the defendants jointly and severally, to pay plaintiffs the following, to wit:
>
> 1. Actual damages in the amount of Five Hundred Thousand (₱500,000.00) Pesos;
>
> 2. Moral Damages in the amount of Two Hundred Fifty Thousand (₱250,000.00) Pesos;
>
> 3. Exemplary Damages in the amount of Two Hundred Fifty Thousand (₱250,000.00) Pesos;
>
> 4. Attorney's Fees in the amount of ₱100,000.00, plus ₱3,000.00 appearance fee;
>
> 5. Plus costs of suit.
>
> SO ORDERED.[12]

Dissatisfied, petitioner elevated the ruling on appeal.

Ruling of the CA

Echoing the observation of the RTC, the CA found that the sheriffs failed to observe the notice requirement mandated under Section 10(c)[13] of Rule 39 in the implementation of the Writ of Execution. The CA ruled that regardless of whether petitioner

---

[12] *Id.* at 355-356.

[13] Section 10. Execution of judgments for specific act.

(c) Delivery or restitution of real property. The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property.

was adjudged rightfully entitled to the possession of the stall, the sheriffs are mandated to observe due process prescribed in the afore-stated Rule in ejecting respondents.[14] The appellate court, however, relieved petitioner from any fault arising out of the manner of implementation of the Writ of Execution. Aside from being the successful party-litigant in the ejectment case, the CA noted that there was no showing that petitioner was complicit with the sheriffs' implementation of the Writ.[15]

Despite the foregoing findings, the CA adjudged petitioner liable for damages to respondents. Except for the actual damages awarded, which were found to be unsubstantiated, the CA sustained the rest of the damages awarded by the trial court. The decretal portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the September 16, 1999 Decision of the Regional Trial Court (RTC) of Manila, Branch 44, in Civil Case No. 98-90087 is AFFIRMED with MODIFICATION in that the award for actual damages is hereby DELETED for insufficiency of evidence and the award for moral damages is reduced from ₱250,000.00 to ₱100,000.00; the exemplary damages, from ₱250,000.00 to ₱100,000.00 and the attorney's fees, from ₱100,00.00 to ₱50,000.00
>
> SO ORDERED.

Petitioner moved for, but was denied, reconsideration in the CA's October 13, 2009 Resolution. Hence, this petition.

Relying on the CA's pronouncement in the adverted Decision that it "cannot ascribe any fault on the part of [petitioner] as to the manner of implementing the writ," and that "records is bereft of any showing that the defendant-appellant corporation has a hand in the non-compliance with the notice requirement mandated by law,"[16] petitioner asserts that it cannot be charged

---

Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

[14] *Rollo*, pp. 41-42.

[15] *Id*. at 43.

[16] *Id*.

jointly and severally with Sheriffs Sicat and Pangan for any damage caused upon respondents due to the implementation of the Writ of Execution. Prescinding from this conclusion, the damages awarded, according to petitioner, do not find support in the body of the decision.

In their Comment[17] on the petition, respondents assert that the sheriffs' acts were upon the order and/or instruction of petitioner, who later benefited from them.

Respondents further appeal for the Court to reinstate the award of actual damages and reimpose the amounts of moral and exemplary damages and attorney's fees fixed in the RTC's Decision.

Petitioner, in its Reply[18] to respondents' Comment, reiterates its earlier asseverations that it did not have a hand in the implementation of the writ of execution, and further argues that the CA's Decision as to damages had become final and can no longer be modified or altered as nowhere in the records does it show that respondents moved for reconsideration or filed an appeal of the said Decision.

Issue

Succinctly, the sole issue for the resolution of this Court is whether or not the CA erred in sustaining the moral and exemplary damages awarded, including attorney's fees, despite its finding that petitioner had no participation in the implementation of the Writ of Execution.

Ruling of the Court

The petition is meritorious. The joint and solidary liability of petitioner has no factual and legal basis.

It is undisputed that petitioner succeeded in securing a favorable judgment in the ejectment case; therefore, it was well within its right to move for the execution of the MTC's Decision

---

[17] *Id*. at 593-601.

[18] *Id*. at 615-622.

pursuant to Sec. 19, Rule 70 of the Rules of Court. The rule allows for the immediate execution of judgment in the event that judgment is rendered against the defendant in an unlawful detainer or forcible entry case, provided that certain conditions are met, viz:

> Section 19. Immediate execution of judgment; how to stay same. — If judgment is rendered against the defendant, execution shall issue immediately upon motion unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the papers, to the clerk of the Regional Trial Court to which the action is appealed.

Petitioner clearly elected to exercise its right under the aforestated provision; thus, its move to execute the MTC judgment enjoys the disputable presumption under Sec. 3(ff),[19] Rule 131 of the Revised Rules on Evidence that it obeyed the applicable law and rules in doing so.

We have, in *Philippine Agila Satellite Inc. v. Usec. Trinidad-Lichauco*,[20] elucidated that "a civil complaint for damages necessarily alleges that the defendant committed a wrongful

---

[19] Section 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(ff) That the law has been obeyed.

[20] G.R. No. 142362, May 3, 2006, 489 SCRA 22.

act or omission that would serve as basis for the award of damages." As such, it was incumbent upon respondents to overcome the aforestated presumption and to prove that petitioner abused its rights and willfully intended to inflict damage upon them before they can claim damages from the former. Otherwise, having the sole prerogative to move to execute the judgment, the disputable presumption that petitioner is innocent of wrongdoing against respondents prevails.

A reading of the RTC's judgment shows that it was not conclusively proved that petitioner committed bad faith or connived with the sheriffs in the implementation of the Writ. Moreover, no less than the CA, in the body of its Decision, absolved petitioner from any fault and participation in the injury inflicted upon respondents by reason of the haphazard implementation of the Writ of Execution. The CA said:

> Having enforced the writ of execution with undue haste and without giving [respondents] the required prior notice and reasonable time to vacate the subject stall, it is then safe to say that defendants-appellants sheriffs had indeed [run] afoul to the mandate of Section 10 (c) of Rule 39 of the Rules of Court. As a result, [respondents] suffered damages and the reputation of the judicial system is sullied by the isolated acts of a few (Deang *vs*. Sicat, 446 SCRA 22, 32 [2004]).
>
> On this score, **we cannot ascribe any fault on the part of [petitioner] corporation as to the manner of implementing the writ**. As it is, the said corporation is the winning party in the ejectment case. Just like any others, it only desired the immediate execution of the judgment of the court, which was rendered favorable to them. **Records is bereft of any showing that defendant-appellant [had] a hand in the non-compliance with the notice requirement mandated by law**.[21] (emphasis supplied)

The CA's pronouncement is manifestly incongruent with the disposition of the case as stated in the *fallo* of the assailed Decision. The Court is not unmindful of the rule that "the operative part in every decision is the dispositive portion or the *fallo,* and where there is conflict between the *fallo* and the

---

[21] *Rollo*, p. 43.

body of the decision, the *fallo* controls.[22] However, the rule is not without exception. Where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[23]

This case falls squarely under the exception. The CA's own categorical finding, as embodied and discussed in the body of the adverted decision, negates any liability on the part of petitioner to compensate respondents for the injuries they suffered due to the misconduct and culpability of Sheriffs Sicat and Pangan, for which they were accordingly administratively charged and disciplined.[24] To hold petitioners liable for damages, despite having been categorically absolved, is manifestly unjust and inequitable.

Applying the foregoing disquisition in the present case, We cannot sustain the judgment affirming petitioner's liability for damages to respondents.

Moral damages are awarded to enable the injured party to obtain means, diversions, or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action.[25] For a claim for moral damages to prosper, the claimant must prove that: (1) *first*, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second*, **there must be culpable act or omission factually established**; (3) *third*, the wrongful act or omission of the defendant is the proximate cause of the

---

[22] *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522; citing *Mendoza, Jr. v. San Miguel Foods, Inc.*, G.R. No. 158684, May 16, 2005, 458 SCRA 664.

[23] *Cembrano v. City of Butuan*, G.R. No. 163605, September 20, 2006, 502 SCRA 494; citing *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 833 (2001).

[24] See *Deang v. Sicat*, A.M. No. P-00-1423, December 10, 2004, 446 SCRA 22.

[25] *Kierulf v. Court of Appeals*, G.R. No. 99301, March 13, 1997, 269 SCRA 433.

injury sustained by the claimant; and (4) *fourth*, the award of damages is predicated on any of the cases stated in Article 2219[26] of the Civil Code.[27]

As discussed, the culpable act or omission on the part of petitioner that resulted in injury to respondents was not factually established.

The Court likewise cannot affirm petitioner's liability for exemplary damages, attorney's fees, and cost of suit. The award of exemplary damages is proper only if respondents showed their entitlement to moral, temperate or compensatory damages; yet, similar to the moral damages claimed, respondents were not able to establish their entitlement. Anent the liability of petitioners for attorney's fees and cost of suit, the same must similarly be deleted in light of the reversal of judgment as to them.

Regrettably, the execution of the MTC judgment was tainted with irregularities that resulted in damage to respondents. Nevertheless, under the principle of *damnum absque injuria*, the legitimate exercise of a person's rights, even if it causes loss to another, does not automatically result in an actionable injury.[28]

---

[26] Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. x x x

[27] *Arco Pulp and Paper Co., Inc. v. Lim*, G.R. No. 206806, June 25, 2014, 727 SCRA 275; citing *Francisco v. Ferrer, Jr.*, 405 Phil. 741, 749-750 (2001).

[28] *Amonoy v. Spouses Jose Gutierrez and Angela Fornida*, G.R. No. 140420, February 15, 2001, 351 SCRA 731.

Petitioner must not bear the brunt of the sheriffs' misconduct in the absence of evidence that the latter acted upon its instructions to ignore the rules of procedure in implementing the Writ.

Anent the liability of Sheriffs Sicat and Pangan to respondents, records do not disclose if the former questioned the Decision of the CA before this Court. As such, the judgment against them stands.

WHEREFORE, the petition is hereby **GRANTED**. The June 17, 2009 Decision and October 13, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 65768 are hereby **AFFIRMED** with **MODIFICATION**. The joint and solidary liability of petitioner Santos-Yllana Realty Corporation is hereby **DELETED**.

No pronouncement as to costs.

SO ORDERED.

Bersamin, Reyes, Jardeleza, and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 194137. June 21, 2017]

AMBASSADOR HOTEL, INC., *petitioner, vs.* **SOCIAL SECURITY SYSTEM,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY LAW (REPUBLIC ACT NO. 8282); EMPLOYER, DEFINED; A JURIDICAL ENTITY IS OBLIGATED TO REMIT SSS CONTRIBUTIONS; PENALTY FOR NON-REMITTANCE OF SSS CONTRIBUTIONS. — Under Section 8(c) of R.A.

No. 8282, an employer is defined as "any person, natural or **juridical**, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government." Ambassador Hotel, as a juridical entity, is still bound by the provisions of R.A. No. 8282. x x x. Verily, prompt remittance of SSS contributions under [Section 22 (a) of R.A. No. 822] is mandatory. Any divergence from this rule subjects the employer not only to monetary sanction, that is, the payment of penalty of three percent (3%) per month, but also to criminal prosecution if the employer fails to: (a) register its employees with the SSS; (b) deduct monthly contributions from the salaries/wages of its employees; or (c) remit to the SSS its employees' SSS contributions and/or loan payments after deducting the same from their respective salaries/wages.

2. ID.; ID.; A CORPORATION IS LIABLE FOR NON-REMITTANCE OF SSS CONTRIBUTIONS BUT ITS HEAD, DIRECTORS OR OFFICERS SHALL SUFFER THE PERSONAL CRIMINAL LIABILITY.— [E]ven when the employer is a corporation, it shall still be held liable for the non-remittance of SSS contributions. It is, however, the head, directors or officers that shall suffer the personal criminal liability. Although a corporation is invested by law with a personality separate and distinct from that of the persons composing it, the corporate veil is pierced when a director, trustee or officer is made personally liable by specific provision of law. In this regard, Section 28 (f) of R.A. No. 8282 explicitly provides that "[i]f the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense." Thus, a corporation cannot invoke its separate judicial entity to escape its liability for non-payment of SSS contributions.

3. ID.; ID.; JURISDICTION OVER THE CORPORATION IN A CRIMINAL CASE IS ACQUIRED THROUGH SERVICE OF WARRANT OF ARREST UPON ITS HEAD, DIRECTORS OR PARTNERS AS THE LAW DISREGARDS THE SEPARATE PERSONALITY BETWEEN THE

CORPORATION AND ITS OFFICERS WITH RESPECT TO VIOLATIONS OF R.A. NO. 8282.— To acquire jurisdiction over the corporation in a criminal case, its head, directors or partners must be served with a warrant of arrest. Naturally, a juridical entity cannot be the subject of an arrest because it is a mere fiction of law; thus, an arrest on its representative is sufficient to acquire jurisdiction over it. To reiterate, the law specifically disregards the separate personality between the corporation and its officers with respect to violations of R.A. No. 8282; thus, an arrest on its officers binds the corporation. In this case, Yolanda, as President of Ambassador Hotel, was arrested and brought before the RTC. Consequently, the trial court acquired jurisdiction over the person of Yolanda and of Ambassador Hotel as the former was its representative. No separate service of summons is required for the hotel because the law simply requires the arrest of its agent for the court to acquire jurisdiction over it in the criminal action. Likewise, there is no requirement to implead Ambassador Hotel as a party to the criminal case because it is deemed included therein through its managing head, directors or partners, as provided by Section 28 (f) of R.A. No. 8282.

4. **ID.; ID.; THE CIVIL ACTION AGAINST THE CORPORATION FOR THE RECOVERY OF CIVIL LIABILITY ARISING FROM THE NON-REMITTANCE OF SSS CONTRIBUTIONS IS DEEMED INSTITUTED WITH THE CRIMINAL ACTION.—** It is a basic rule that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action. Necessarily, when the Information was filed with the RTC, the civil action against Ambassador Hotel for the recovery of civil liability arising from the non-remittance of SSS contributions was deemed instituted therein.

5. **ID.; ID.; ID.; THE ACQUITTAL OF THE OFFICER OF THE CORPORATION IN THE CRIMINAL CASE WILL NOT RESULT IN THE DISMISSAL OF THE CIVIL CASE AGAINST CORPORATION FOR THE RECOVERY OF CIVIL LIABILITY ARISING FROM THE NON-REMITTANCE OF SSS CONTRIBUTIONS WHERE THE**

RTC DID NOT DECLARE IN ITS JUDGMENT THAT THE FACT FROM WHICH THE CIVIL LIABILITY MIGHT ARISE DID NOT EXIST.— [E]xtinction of the penal action does not carry with it the extinction of the civil action, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist. When Yolanda was acquitted in the criminal case because it was proven that she did not perform the functions of the president from June 1999 to March 2001, it did not result in the dismissal of the civil case against Ambassador Hotel. The RTC did not declare in its judgment that the fact from which the civil liability might arise did not exist. Thus, the civil action, deemed impliedly instituted in the criminal case, remains.

6. **REMEDIAL LAW; COURTS; JURISDICTION; THE JURISDICTION OF A COURT DEPENDS UPON THE STATE OF FACTS EXISTING AT THE TIME IT IS INVOKED, AND IF THE JURISDICTION ONCE ATTACHES TO THE PERSON AND SUBJECT MATTER OF THE LITIGATION, THE SUBSEQUENT HAPPENING OF EVENTS, ALTHOUGH THEY ARE OF SUCH A CHARACTER AS WOULD HAVE PREVENTED JURISDICTION FROM ATTACHING IN THE FIRST INSTANCE, WILL NOT OPERATE TO OUST JURISDICTION ALREADY ATTACHED.—** The argument of Ambassador Hotel - that the RTC lost its jurisdiction over it when Yolanda was acquitted - fails to convince. It is a well-settled rule that the jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached. Also, it is fundamental that the jurisdiction of a court in criminal cases is determined by the allegations of the information or criminal complaint and not by the result of the evidence presented at the trial, much less by the trial judge's personal appraisal of the affidavits and exhibits attached by the fiscal to the record of the case without hearing the parties and their witnesses nor receiving their evidence at a proper trial. In this case, the Information alleged that Yolanda was the President of Ambassador Hotel. Moreover, such fact was supported by the affidavits and exhibits attached

to the Information. Hence, the RTC properly issued a warrant of arrest over Yolanda pursuant to Section 28(f) of R.A. No. 8282 to acquire jurisdiction over her person and that of Ambassador Hotel. From that moment, the jurisdiction over their persons was acquired.

7. ID.; ID.; ID.; ONCE JURISDICTION ATTACHES, IT SHALL NOT BE REMOVED FROM THE COURT UNTIL THE TERMINATION OF THE CASE.— Even though it was established during the trial that Yolanda was not performing the functions of the hotel's president from June 1999 to March 2001, which negated her criminal responsibility, it is *non sequitur* that the jurisdiction over Ambassador Hotel will be detached. Any subsequent event during trial will not strip the RTC of its jurisdiction because once it attaches, the same shall remain with the said court until it renders judgment. To subscribe to the theory of Ambassador Hotel - that evidence will dictate the jurisdiction of the court - will create a chaotic situation. It will be absurd for the courts to first conduct trial on the merits before it can determine whether it has jurisdiction over the person or subject matter. The more logical and orderly approach is for the court to determine jurisdiction by the allegations in the information or criminal complaint, as supported by the affidavits and exhibits attached therein, and not by the evidence at trial. Once jurisdiction attaches, it shall not be removed from the court until the termination of the case. As the jurisdiction over Ambassador Hotel was obtained, it became a party in the case and, it was given fair opportunity to present its evidence and controvert the prosecution's evidence. In fine, the RTC's jurisdiction over Ambassador Hotel continued in spite of Yolanda's acquittal.

8. LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY LAW; PETITIONER CORPORATION FOUND LIABLE FOR NON-REMITTANCE OF SSS CONTRIBUTIONS.— [T]he Court is of the view that there is preponderance of evidence that Ambassador Hotel failed to remit its SSS contributions from June 1999 to March 2001 in the amount of ₱584,804.00. It must pay the said amount to the SSS plus interest at the legal rate of six percent (6%) *per annum*.

APPEARANCES OF COUNSEL

Ray Anthony F. Fajarito for petitioner.
SSS Cluster Legal Unit for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the July 29, 2010 Decision[1] and October 18, 2010 Resolution[2] of the Court Appeals *(CA)* in CA-G.R. CV No. 87948, which affirmed *in toto* the December 20, 2005 Decision[3] of the Regional Trial Court, Branch 218, Quezon City *(RTC)* in Criminal Case No. Q-04-125458, a case for non-payment of Social Security System *(SSS)* contributions.

Sometime in September 2001, the SSS filed a complaint with the City Prosecutor's Office of Quezon City against Ambassador Hotel, Inc. *(Ambassador Hotel)* and its officers for non-remittance of SSS contributions and penalty liabilities for the period from June 1999 to March 2001 in the aggregate amount of ₱769,575.48.

After preliminary investigation, the City Prosecutor's Office filed an Information,[4] dated January 28, 2004, before the RTC charging Ambassador Hotel, Inc.'s Yolanda Chan *(Yolanda)*, as President and Chairman of the Board; and Alvin Louie Rivera, as Treasurer and Head of the Finance Department, with violation of Section 22(a), in relation to Section 22(d) and Section 28(e) of Republic Act *(R.A.)* No. 1161, as amended by R.A. No. 8282. Only Yolanda was arrested. Upon arraignment, she pleaded not guilty. Thereafter, trial ensued.

---

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Juan Q. Enriquez and Florito S. Macalino, concurring; *rollo*, pp. 64-76.

[2] *Id*. at 89-90.

[3] Penned by Judge Hilario L. Laqui; *id*. at 27-35.

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

Evidence of the Prosecution

The prosecution presented Maria Rezell C. De Ocampo *(De Ocampo),* Accounts Officer of SSS and Simeon Nicolas Chan *(Simeon)*, former President of Ambassador Hotel. Their combined testimonies tended to establish the following:

De Ocampo was assigned to investigate the account of Ambassador Hotel. In the course of her investigation, she discovered that the hotel was delinquent in its payment of contributions for the period from June 1999 to March 2001, as an examination of the hotel's records revealed that its last payment was made in May 1999. Thereafter, De Ocampo prepared a delinquency assessment and a billing letter for Ambassador Hotel. On April 17, 2001, she visited Ambassador Hotel, where a certain Guillermo Ciriaco *(Ciriaco)* assisted her. De Ocampo then informed Ciriaco of the hotel's delinquency. She showed him the assessment, billing letter, and letter of authority. De Ocampo also requested for the records of previous SSS payments, but the same could not be produced. Thus, she told Ciriaco that Ambassador Hotel had to comply with the said request within fifteen (15) days.

De Ocampo referred the matter to their Cluster Legal Unit. On May 23, 2001, she prepared an investigation report stating that Ambassador Hotel failed to present the required reports and to fully pay their outstanding delinquency. In turn, the Cluster Legal Unit issued a final demand letter to Ambassador Hotel. De Ocampo sent the final demand letter to Ambassador Hotel via registered mail. She also returned to the hotel to personally serve the said letter, which was received by Norman Cordon, Chief Operating Officer of Ambassador Hotel.

On July 4, 2001, Pilar Barzanilla of Ambassador Hotel went to the SSS office and submitted a list of unpaid contributions from June 1999 to March 2001. On September 14, 2001, De Ocampo went back to the hotel to seek compliance with the demand letter. The representatives of the hotel requested that the delinquency be settled by installment. They also submitted a collection list, the audited financial settlement and the request

of installment to the SSS. Ambassador Hotel, however, did not tender any postdated checks for the installment payments.

De Ocampo concluded that based on the actual assessment and documents submitted, the unpaid contributions of Ambassador Hotel from June 1999 to March 2001 amounted to ₱303,459.00. Further, as of January 2, 2005, the hotel is liable for penalties in the amount of ₱531,341.44.

On the other hand, Simeon testified that he was the President of Ambassador Hotel from 1971 until he was replaced in 1998; and that on April 25, 1998, her daughter, Yolanda, became the President of the hotel pursuant to Board Resolution No. 7, series of 1998.[5]

Evidence of the Defense

The defense presented the following witnesses: Yolanda, President and Chairman of the Board of Ambassador Hotel; Atty. Laurenao Galon *(Atty. Galon)*, lawyer of Ambassador Hotel; Michael Paragas, Sheriff of RTC Branch 46; and Norman D. Cordon *(Cordon)*, Chief Operating Officer of Ambassador Hotel. Their testimonies are summarized, to wit:

Yolanda was elected as President of Ambassador Hotel on April 25, 1998. Simeon, however, prevented her from assuming her office and performing her functions as President. Consequently, she filed a case for grave coercion and grave threats against Simeon and his allies. On the other hand, Simeon filed a case for injunction, damages and declaration of nullity of the corporate meeting, which elected Yolanda as President. The case was raffled to RTC Branch 46, which ruled in her favor. Pursuant to the Order, dated April 10, 2001 of RTC Branch 46, she assumed the position of President of the hotel without any impediment.

Accordingly, Yolanda argued that because she was not performing the functions as the President of Ambassador Hotel from April 25, 1998 until April 10, 2001, she could not be held

---

[5] *Id*. at 30.

criminally liable for the non-payment of SSS contributions from June 1999 to March 2001.

Further, Cordon testified that the SSS indeed conducted an investigation as to their non-remittance of contributions. He attempted to locate the records regarding their SSS contributions, but could not find any. Cordon also communicated with the SSS, but it failed to respond and instead filed the present case against them.

The RTC Ruling

In its December 20, 2005 Decision, the RTC held that Yolanda could not be held criminally liable for the non-payment of SSS contributions because she was not performing the duties of the hotel's president from June 1999 to March 2001. It opined that Yolanda could not be considered as the managing head of the hotel within the purview of Section 28(f) of R.A. No. 8282; thus, she was not criminally accountable. The RTC, however, ruled that the acquittal of Yolanda did not absolve Ambassador Hotel from its civil liabilities. Thus, it concluded that Ambassador Hotel must pay SSS in the amount of ₱584,804.00 as contributions for SSS Medicare and Employee Compensation, including 3% penalties thereon.

Aggrieved, Ambassador Hotel filed an appeal insofar as the civil liability is concerned. It alleged that the RTC did not acquire jurisdiction over its person because it was not a party in the said case.

The CA Ruling

In its assailed decision, dated July 29, 2010, the CA affirmed *in toto* the RTC ruling. It held that the payment of SSS contributions is mandatory and its non-payment results in criminal prosecution. The appellate court stated that every criminal liability carries with it civil liability. As Ambassador Hotel neither waived nor reserved its right to institute a separate civil case, it was deemed instituted in the criminal case. The CA opined that the acquittal of Yolanda did not extinguish the civil action against Ambassador Hotel as the RTC did not declare that the fact from which the civil liability might arise did not

exist. Moreover, it underscored that Ambassador Hotel was not deprived of due process as its directors and officers were informed numerous times regarding its delinquency and the pending case filed against it. The CA concluded that Ambassador Hotel was given every opportunity to contest its obligation with the SSS yet it did nothing.

Ambassador Hotel moved for reconsideration, but its motion was denied by the CA in its assailed resolution, dated October 18, 2010.

Hence, this petition.

ISSUES

I

WHETHER OR NOT THE LOWER COURT ACQUIRED JURISDICTION OVER THE PERSON OF THE PETITIONER.

II

WHETHER OR NOT PETITIONER WAS DEPRIVED OF DUE PROCESS WHEN THE LOWER COURT DECLARED IT LIABLE TO RESPONDENT SSS EVEN THOUGH IT IS NOT A PARTY TO THE CASE.

III

WHETHER OR NOT THE DECISION RENDERED BY THE LOWER COURT DECLARING PETITIONER LIABLE TO RESPONDENT SOCIAL SECURITY SYSTEM FOR ALLEGED UNREMITTED SSS CONTRIBUTION IS VALID.[6]

In its Memorandum,[7] Ambassador Hotel argued that it has a separate and distinct personality from its officers such as Yolanda; that it was neither a party to the criminal case nor was summons issued against it, hence, the RTC did not acquire jurisdiction over it; that it was deprived due process when the RTC ruled that it was civilly liable for the unpaid SSS contributions even though the trial court had no jurisdiction

---

[6] *Id*. at 155.

[7] *Id*. at 152-161.

over its person; and that the RTC had no right to render an adverse decision against it because it was not a party in the criminal action.

In its Memorandum,[8] the SSS countered that under R.A. No. 8282, employers, including juridical entities, that violate their obligation to remit the SSS contributions shall be criminally liable and that in cases of corporations, it is the managing head that shall be the one criminally responsible. It argued that since Yolanda, as President of Ambassador Hotel, was properly arrested, the RTC acquired jurisdiction over it. The SSS added that the acquittal of Yolanda did not extinguish the civil liability of the hotel because it was deemed instituted in the criminal action. Further, it highlighted that Ambassador Hotel was given sufficient notice of its delinquency and the pending case against it.

The Court's Ruling

The petition is bereft of merit.

The Social Security System is a government agency imbued with a salutary purpose to carry out the policy of the State to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old-age, death and other contingencies resulting in loss of income or financial burden.[9]

The soundness and viability of the funds of the SSS in turn depend on the contributions of its covered employee and employer members, which it invests in order to deliver the basic social benefits and privileges to its members. The entitlement to and amount of benefits and privileges of the covered members are contribution-based. Both the soundness and viability of the

---

[8] *Id*. at 165-182.

[9] *Garcia v. Social Security Commission Legal and Collection, SSS,* 565 Phil. 193, 214 (2007).

funds of the SSS as well as the entitlement and amount of benefits and privileges of its members are adversely affected to a great extent by the non-remittance of the much-needed contributions.[10]

Ambassador Hotel is obligated to remit SSS contributions

Under Section 8(c) of R.A. No. 8282, an employer is defined as "any person, natural or **juridical**, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government." Ambassador Hotel, as a juridical entity, is still bound by the provisions of R.A. No. 8282. Section 22 (a) thereof states:

> *Remittance of Contributions.* (a) The contributions imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided,* That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

Verily, prompt remittance of SSS contributions under the aforesaid provision is mandatory. Any divergence from this rule subjects the employer not only to monetary sanctions, that is, the payment of penalty of three percent (3%) per month, but also to criminal prosecution if the employer fails to: (a) register

---

[10] *Id*.

its employees with the SSS; (b) deduct monthly contributions from the salaries/wages of its employees; or (c) remit to the SSS its employees' SSS contributions and/or loan payments after deducting the same from their respective salaries/wages.[11]

To acquire jurisdiction over Ambassador Hotel, its managing head, director or partner must be arrested

As discussed above, even when the employer is a corporation, it shall still be held liable for the non-remittance of SSS contributions. It is, however, the head, directors or officers that shall suffer the personal criminal liability. Although a corporation is invested by law with a personality separate and distinct from that of the persons composing it,[12] the corporate veil is pierced when a director, trustee or officer is made personally liable by specific provision of law.[13] In this regard, Section 28 (f) of R.A. No. 8282 explicitly provides that "[i]f the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense." Thus, a corporation cannot invoke its separate judicial entity to escape its liability for non-payment of SSS contributions.

To acquire jurisdiction over the corporation in a criminal case, its head, directors or partners must be served with a warrant of arrest. Naturally, a juridical entity cannot be the subject of an arrest because it is a mere fiction of law; thus, an arrest on its representative is sufficient to acquire jurisdiction over it. To reiterate, the law specifically disregards the separate personality between the corporation and its officers with respect to violations of R.A. No. 8282; thus, an arrest on its officers binds the corporation.

---

[11] *Navarra v. People*, G.R. No. 224943, March 20, 2017.

[12] *Kukan International Corporation v. Reyes*, 646 Phil. 210, 236 (2010).

[13] *Aratea v. Suico,* 547 Phil. 407, 414 (2007).

In this case, Yolanda, as President of Ambassador Hotel, was arrested and brought before the RTC. Consequently, the trial court acquired jurisdiction over the person of Yolanda and of Ambassador Hotel as the former was its representative. No separate service of summons is required for the hotel because the law simply requires the arrest of its agent for the court to acquire jurisdiction over it in the criminal action. Likewise, there is no requirement to implead Ambassador Hotel as a party to the criminal case because it is deemed included therein through its managing head, directors or partners, as provided by Section 28 (f) of R.A. No. 8282.

The acquittal of Yolanda does not extinguish the civil liability of Ambassador Hotel

It is a basic rule that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action.[14] Necessarily, when the Information was filed with the RTC, the civil action against Ambassador Hotel for the recovery of civil liability arising from the non-remittance of SSS contributions was deemed instituted therein.

Further, extinction of the penal action does not carry with it the extinction of the civil action, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist.[15] When Yolanda was acquitted in the criminal case because it was proven that she did not perform the functions of the president from June 1999 to March 2001, it did not result in the dismissal of the civil case against Ambassador Hotel. The RTC did not declare in its judgment that the fact from which the civil liability might arise did not exist. Thus, the civil action, deemed impliedly instituted in the criminal case, remains.

---

[14] Section 1, Rule 111 of the Rules of Court.

[15] *Abellana v. People,* 671 Phil. 444, 451 (2011).

The argument of Ambassador Hotel — that the RTC lost its jurisdiction over it when Yolanda was acquitted — fails to convince. It is a well-settled rule that the jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached.[16] Also, it is fundamental that the jurisdiction of a court in criminal cases is determined by the allegations of the information or criminal complaint and not by the result of the evidence presented at the trial, much less by the trial judge's personal appraisal of the affidavits and exhibits attached by the fiscal to the record of the case without hearing the parties and their witnesses nor receiving their evidence at a proper trial.[17]

In this case, the Information alleged that Yolanda was the President of Ambassador Hotel. Moreover, such fact was supported by the affidavits and exhibits attached to the Information. Hence, the RTC properly issued a warrant of arrest over Yolanda pursuant to Section 28(f) of R.A. No. 8282 to acquire jurisdiction over her person and that of Ambassador Hotel. From that moment, the jurisdiction over their persons was acquired.

Even though it was established during the trial that Yolanda was not performing the functions of the hotel's president from June 1999 to March 2001, which negated her criminal responsibility, it is *non sequitur* that the jurisdiction over Ambassador Hotel will be detached. Any subsequent event during trial will not strip the RTC of its jurisdiction because once it attaches, the same shall remain with the said court until it renders judgment.

To subscribe to the theory of Ambassador Hotel — that evidence will dictate the jurisdiction of the court — will create a chaotic

---

[16] *Dioquino v. Cruz,* 202 Phil. 35, 41 (1982).

[17] *People v. Ocaya,* 172 Phil. 576, 581 (1978).

situation. It will be absurd for the courts to first conduct trial on the merits before it can determine whether it has jurisdiction over the person or subject matter. The more logical and orderly approach is for the court to determine jurisdiction by the allegations in the information or criminal complaint, as supported by the affidavits and exhibits attached therein, and not by the evidence at trial. Once jurisdiction attaches, it shall not be removed from the court until the termination of the case.

As the jurisdiction over Ambassador Hotel was obtained, it became a party in the case and, as will be discussed later, it was given fair opportunity to present its evidence and controvert the prosecution's evidence. In fine, the RTC's jurisdiction over Ambassador Hotel continued in spite of Yolanda's acquittal.

Ambassador Hotel failed to controvert the evidence of its non-remittance of SSS contributions

The CA found that Ambassador Hotel was well informed of its delinquency by the SSS even before the case was filed. When the case was eventually filed, its directors and officers were also notified. Notably, even its own lawyer, Atty. Galon, testified during trial on its behalf. Ambassador Hotel was given the opportunity to present its defense before the court for its non-payment of SSS contributions. Thus, it was given the right to be heard and controvert the evidence presented against it.

During trial, the prosecution established that the SSS, through De Ocampo, discovered that the last remittance of SSS contributions by Ambassador Hotel was made in May 1999. She then informed the hotel of its delinquency when she visited the establishment on April 17, 2001. She gave the hotel's representative the delinquency assessment and the billing letter. De Ocampo also requested that the records of previous SSS payments be presented, but these could not be produced. After referring the case to the Cluster Legal Unit, De Ocampo sent a final demand letter to Ambassador Hotel by registered mail and personal service. Notwithstanding the several notices of its delinquency, Ambassador Hotel failed to settle its obligations.

Moreover, though it offered to pay its delinquency through installment, no postdated checks were ever submitted.

On the other hand, Ambassador Hotel's evidence simply focused on establishing that Yolanda was not acting as its President from June 1999 to March 2001 because of an internal dispute. Although this may be sufficient to eliminate the criminal liability of Yolanda, it does not justify the non-payment of SSS contributions. Ambassador Hotel did not squarely address the issue on its obligations because there was dearth of evidence that it remitted the said contributions. Cordon, a witness for the hotel, even admitted that they were informed of their delinquency and that they attempted to unearth its SSS records to defend its obligations, but failed to do so. The hotel never proved that it had already paid its contributions or, if not, who should have been accountable for its non-payment. Glaringly, even though Ambassador Hotel was given sufficient leeway to explain its obligations, it did not take advantage of the said opportunity. Consequently, it had nothing else to blame for its predicament but itself.

In fine, the Court is of the view that there is preponderance of evidence that Ambassador Hotel failed to remit its SSS contributions from June 1999 to March 2001 in the amount of ₱584,804.00. It must pay the said amount to the SSS plus interest at the legal rate of six percent (6%) *per annum.*

WHEREFORE, the petition is **DENIED**. The July 29, 2010 Decision and October 18, 2010 Resolution of the Court Appeals in CA-G.R. CV No. 87948 are **AFFIRMED** with **MODIFICATION** in that the judgment award shall earn interest at the rate of six percent (6%) *per annum* from the date of finality until fully paid.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[*] Per Special Order No. 2445 dated June 16, 2017.

FIRST DIVISION

[G.R. No. 198162. June 21, 2017]

CORAZON M. LACAP, *petitioner, vs.* **SANDIGANBAYAN [Fourth Division] and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; PUBLIC OFFICERS ARE CALLED UPON TO ACT EXPEDITIOUSLY ON MATTERS PENDING BEFORE THEM; RATIONALE.— The Constitution mandates that: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." Thus, "[they] are called upon to act expeditiously on matters pending before them. For only in acting thereon either by signifying approval or disapproval may the [public] continue on to the next step of the bureaucratic process. On the other hand, official inaction brings to a standstill the administrative process and the [public] is left in the darkness of uncertainty."

2. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION; ELEMENTS.— [T]he elements of the offense penalized under Section 3(f) of RA 3019, are: 1.] The offender is a public officer; 2.] The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him; 3.] Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and 4.] Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.

3. ID.; ID.; ID.; DELIBERATE REFUSAL TO ACT ON AN APPLICATION FOR MAYOR'S PERMIT, WHEN MOTIVATED BY PERSONAL CONFLICTS AND

POLITICAL CONSIDERATIONS, IS DISCRIMINATORY AND CONSTITUTES A VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT; CASE AT BAR.— In an application for a mayor's permit or license to do business in a municipality or city, the procedure is fairly standard and uncomplicated. It requires the submission of the required documents and the payment of the assessed business taxes and fees. In case of failure to comply with the requirements, the application deserves to be disapproved. If the application is compliant, then approval is the action to be taken. An inaction or refusal to act is a course of action anathema to public service with utmost responsibility and efficiency. If the deliberate refusal to act or intentional inaction on an application for mayor's permit is motivated by personal conflicts and political considerations, it thus becomes discriminatory, and constitutes a violation of the Anti-Graft and Corrupt Practices Act. The authority of the mayor to issue licenses and permits is not ministerial, it is discretionary. x x x While a discretionary power or authority of Corazon, as the then Municipal Mayor of Masantol, Pampanga, is involved in this case, its exercise must be pursuant to law and ordinance. The mayor must act on the application for a business permit, and as correctly pointed out by the Sandiganbayan, the action expected of the mayor was either to approve or disapprove the same. x x x The purported advice for Fermina to re-apply for a business permit in the face of the duly filled-up application and supporting documents attached to Atty. Calderon's letter, as well as the express supplication for an action with dispatch on the application unequivocally show the intentional inaction or deliberate refusal to act on Corazon's part. x x x Assuming that Fermina indeed had evil motives in seeking the intevention of the Office of the Ombudsman, Corazon, being the public officer tasked to issue municipal permits and licenses, was expected to rise to rise above personal conflicts and political rivalries and act pursuant to the applicable law and ordinance. The actuations of Corazon vis-à-vis Fermina, being a political rival, should have been above board and circumspect to forestall any complaint from Fermina of political vendetta.

APPEARANCES OF COUNSEL

Paredes & Vicente Law Offices for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated February 21, 2011 (Decision) of the Sandiganbayan[2] in Crim. Case No. SB 08-CRM-0030, finding accused Corazon Mallari Lacap (Corazon) guilty beyond reasonable doubt of violation of Section 3(f) of Republic Act No. 3019 (RA 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act," and imposing upon her the indeterminate penalty of six (6) years and one (1) month imprisonment as minimum to ten (10) years imprisonment as maximum, with perpetual disqualification from public office.

The Charge Against the Accused

Corazon was indicted for violation of Section 3(f) of RA 3019, for having allegedly neglected or refused, after due demand, and without sufficient justification, to act within a reasonable time, on the application of complainant Fermina Santos (Fermina) for a business permit in Masantol, Pampanga for the years 1999 and 2000 for the purpose of discriminating against Fermina.[3] The Information reads:

That during the period from February 1999 to March 2000, or sometime prior or subsequent thereto, in the Municipality of Masantol, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, CORAZON M. LACAP, a high ranking public officer, being the Municipal Mayor of Masantol, Pampanga, while in the performance of her official functions, committing the offense in relation to duty and taking advantage thereof, motivated by one criminal impulse, did then and there willfully, unlawfully and criminally neglect or refuse to act, within a reasonable

---

[1] *Rollo*, pp. 9-29. Penned by Associate Justice Maria Cristina J. Cornejo, with Associate Justices Gregory S. Ong and Jose R. Hernandez concurring.

[2] Fourth Division.

[3] *Rollo*, pp. 9-10.

time, on private complainant Fermina Santos' application for Mayor's Permit, duly filed with the office of the accused within the above-stated periods (sic), and despite her repeated demands or requests and complete documentary requirements supporting the same, which unlawful act of the accused was done to spite and retaliate against said private complainant for having previously filed a criminal complaint against the accused's husband, thereby favoring the latter's own interest and discriminating against Fermina Santos, to her damage and prejudice.

CONTRARY TO LAW.[4]

The pertinent sub-section of RA 3019 provides:

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

x x x x x x x x x

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

The Facts and Antecedent Proceedings

Corazon was arraigned on April 28, 2008 and, with the assistance of her counsel, she pleaded not guilty to the charge against her. The pre-trial conference was terminated on July 11, 2008. Trial on the merits then ensued.[5]

Version of the Prosecution

The prosecution presented the following witnesses:

1. Fermina Santos, the private complainant;

---

[4] Sandiganbayan records, Vol. 1, pp. 1-2.

[5] *Rollo*, p. 10.

2. Atty. Julita Santos Manalac Calderon (Atty. Calderon), the Graft Investigation and Prosecution Officer III of the Office of the Ombudsman assigned at the Public Assistance Bureau Central Office;

3. Marina Josieriza Fronda Paras, the municipal treasurer of Masantol, Pampanga;

4. Alejandro G. Santos, the husband of the complainant;

5. Tomas S. Manansala, the son-in-law of the complainant and an ambulant vendor of school supplies in Sto. Niño, Masantol, Pampanga; and

6. Andres T. Onofre, Jr., a businessman engaged in selling school supplies in Sto. Niño, Masantol, Pampanga.[6]

Fermina's testimony is summarized in the assailed Decision, *viz*:

> She owns the Fersan Variety Store [located in Masantol, Pampanga and] engaged in the sale of school supplies, furniture and accessories since 1975. x x x
>
> She usually applies for a Mayor's Permit between February and March of every year and has been submitting to the Office of the Mayor for the issuance of Mayor's Permit the [required] documents x x x. If everything is complete, she will present these documents to the Office of the Treasurer in Masantol, Pampanga for assessment and evaluation and then it will be submitted to the Office of the Mayor for approval. From 1975 to 1998, the Mayor of Masantol has been issuing her a Mayor's Permit x x x.
>
> For the year 1999, she filed an Application for Mayor's Permit (Exh. A) and submitted to the Mayor's Office the following documents in compliance with the requirements: Taxpayer's Information Sheet (Exh. B), Social Security Systems' Clearance x x x ([Exh.] D), Community Tax Certificate x x x (Exh. E), Health Certificate (Exh. F), Sanitary Permit x x x (Exh. G), Fire Permit x x x (Exh. H), Barangay Certificate (Exh. I), Certificate of Registration of Business Name (Exh. J). However, accused Mayor Corazon Lacap denied her application and she (accused) was angry at her x x x. She went back

---

[6] *Id*. at 10-19.

to accused Lacap twice to ask for reconsideration but she (Lacap) was even more angry, and told them (sic) to leave the place. Accused Lacap even said "I will not sign it, are you lucky?" x x x.

The misunderstanding started when she filed [a complaint] against Abelardo Dizon, the compadre of Mayor Corazon Lacap x x x. Epifanio Lacap[, the husband of the accused] called her up and asked her to withdraw the complaint against his compadre. She told Epifanio to be fair but Epifanio shouted invectives at her. Epifanio said "*kung hindi kayo susunod sa akin, makikita nyo, mga walanghiya kayo, magsilayas kayo diyan*!" x x x.

She went to the Office of Elpidian Asuncion, the Director of the Public Assistance Bureau of the Ombudsman and she was referred to Atty. Julita Calderon.

Atty. Calderon issued a notice to accused Lacap to visit her Office. Atty. Calderon also advised her (Santos) to go to accused Lacap, and after two days, she went to accused Lacap's office together with her husband and a radio reporter x x x. However, accused Lacap still denied her application and told her "[A]re you lucky? You filed a case against my husband, you filed a case against me, and now, I will issue you a permit? Get out!" x x x.

x x x [S]he filed four complaints against the Lacap Spouses. The first was filed against Corazon Lacap in the Sangguniang Panlalawigan of San Fernando, Pampanga when she had the Fersan Store closed on July 3, 1998 (Exh. R); the second was a complaint against her husband, Epifanio Lacap[,] before the Office of the Prosecutor of San Fernando, Pampanga for Serious Oral Defamation (Exh. B); third is a complaint filed before the DILG Region 3 x x x; and the fourth is before the Office of the Ombudsman (Exh. O). She did not violate anything but still former Mayor Epifanio Lacap ordered the closure of her store because of the cases.

x x x [S]he is not aware of a Task Force created in 1998 to eradicate the illegal businesses within Masantol, Pampanga.

In 1998, former Mayor Epifanio Lacap ordered the closure of her store because she filed a complaint against him on March 17, 1998 x x x. It was Epifanio Lacap who asked her to get a permit from the DTI which is one of the requirements for the approval of the application for Mayor's Permit. On April 1, 1998 she was issued a Mayor's Permit but she was told to get a DTI Certificate of Registration x x x. She claimed that her documents were complete when she applied for

Mayor's Permit in 1998. At first her store was ordered closed by Epifanio Lacap and the second time it was ordered closed by Mayor Corazon Lacap on July 3, 1998 x x x.

She also own[ed] the Pining Variety Store which operated from 1980 to 1998 until it was ordered closed by accused Corazon Lacap x x x. She has only one x x x store in Masantol[,] Pampanga. She alleged that every five years, the name of the store should be changed as instructed by the DTI x x x. The name of the store before was Pining [V]ariety [S]tore and after five years x x x [i]n 1998, the name x x x changed to x x x Fersan Variety Store that was ordered closed by Mayor Corazon Lacap x x x.

When she presented her application (Exh. A) for approval, accused Lacap did not look at it and she was very angry x x x.

Witness said that she has a permit in 1998 and yet they closed her store. There were two x x x policemen and a bodyguard carrying firearms who went to her store and forcibly padlocked her store x x x. She was not able to get her merchandise until x x x 2001 so none were (sic) sold or could be sold because they were damaged, either eaten by molds or cockroaches x x x. It was RTC Judge Reynaldo Raura who ordered that her store be opened.[7]

The assailed Decision likewise summarized the testimony of Atty. Calderon in this wise:

She met Fermina Santos in 1998 when the latter went to her office to seek assistance regarding the closing and padlocking of her business establishment x x x.

She wrote to x x x Mayor x x x Corazon Lacap, to ask her the reasons for the closure and padlocking of Santos' store. Accused responded but since it was already late in the year, Santos said that she is no longer interested in the closure and padlocking of her store x x x.

In 1999, Santos again went to her office to ask for assistance in the renewal of her business permit in x x x Masantol, Pampanga because the City Government of Pampanga refused to accept her application for renewal of business permit x x x.

---

[7] *Id*. at 10-13.

Santos submitted to her documents including the original copy of the application which was refused. She (Atty. Calderon) wrote to the Municipal Treasurer of Masantol, Pampanga, Criselda Diaz vda. de Santillan to invite her for a conference and to ask why she refused to accept the documents x x x. When Santillan appeared, she handed a letter (Exh. M) stating that Santos withdrew her application. The letter also states that the Municipal Bookkeeper already processed the application for business permit but when it was brought to the Office of the Mayor, she is no longer in the position to know the result because it was not returned to her anymore x x x.

They wrote Santos to bring the application for them to make a letter forwarding all the documents to the Municipal Mayor. In [a letter dated April 26,] 1999, she wrote again the Municipal Mayor forwarding to her all the documents which were brought by Santos to her Office. She attached to her letter (Exh. N) Exh. A, B, C, D, E, F, G, H, I, K, L. At the time she wrote the letter she had in mind that everything was complete and it is the duty of the Mayor to issue a permit x x x.

Mayor Lacap did not reply but her counsel requested for time to answer the letter dated April 26, 1999. In May, 1999, accused Lacap's counsel made a response (Exh. P) that it was Santos who withdrew her application and thus[,] there is nothing, no application in the Office of the Mayor which they could act on x x x.[8]

In turn, the gist of Marina Josieriza Paras' testimony, as reflected in the assailed Decision, is as follows:

[As the Municipal Treasurer of Masantol, Pampanga], [h]er office is tasked to make the proper implementation of the collection of taxes and fees for the issuance of Mayor's Permit.

Prior to the issuance of a Mayor's Permit, the applicant must x x x proceed to the Office of the Treasurer to secure [an] application form. x x x.

When all the documents are presented, the applicant will proceed to the Assessment Office and will be required to pay the assessment fees. The Municipal Treasurer will in turn issue receipt. The applicant can now go to the Office of the Mayor for the approval and issuance of a Mayor's permit x x x.

---

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

The same procedure applies, except that in the year 1999 [during the incumbency of Lacap] before they can issue the Mayor's Permit, the application should be approved by the Mayor x x x.

x x x x x x x x x

She knows Fermina Santos because Santos ran for Mayor in 1998. At the time when Santos filed the application for business permit for the year 1999 Santos was already a candidate for Mayor in Masantol, Pampanga x x x.[9]

Alejandro Santos, husband of Fermina, testified that:

x x x [O]n two (2) occasions he was maligned by a certain Epifanio Lacap, the husband of accused Corazon Lacap.

Sometime on March 11, 1998, while he was fixing the roof in their warehouse in Arabia, Masantol, Pampanga, he was picked-up by (two) 2 policemen of the then Mayor Epifanio Lacap. He was brought to the Mayor's house and Mayor Epifanio demanded that the case against his compadre, Abelardo Dizon, be withdrawn. He explained to him (Epifanio) that he and Abelardo Dizon had already an agreement and that he can no longer withdraw the case as the same is a case of double sale and is already pending with the court x x x. The Mayor was so angry at him and told him that he does not care even how many agreements he had with his compadre as long as he will withdraw the case against Dizon. His wife also arrived at the Mayor's house and when the Mayor saw her, he even shouted at her: "*Ayan ang isang sakim dumarating, mga putang inang yan mga sakim*! x x x Feeling so humiliated at that time because they were berated in front of so many people, they eventually left the place. After that incident, he and his wife filed complaints against Mayor Epifanio Lacap but he can no longer recall what happened with those complaints.

Sometime in 1999, his wife filed an application for Mayor's permit to operate the business in the market area under the business name Fersan Variety Store, but the same was not approved by accused Mayor Corazon Lacap. But in 1998, they were issued a business permit because at that time they have not yet filed a complaint against Mayor Epifanio Lacap x x x. He thought that there was already a bad blood between their families because he refused to heed the demand

---

[9] *Id*. at 16-17; underscoring supplied.

of former Mayor Epifanio Lacap to withdraw the complaint against Abelardo Dizon x x x.

It was accused Mayor Corazon Lacap who ordered the closure of their store x x x.[10]

Lastly, Andres T. Onofre, Jr. testified that:

He is a businessman engaged in the selling of school supplies also in Sto. Niño, Masantol, Pampanga.

From 1990 to 1999, he was not able to secure license/permit from the Municipality. What he just did was to fill up an application form to operate a store and submit the same to the Municipality of Masantol and then he was already issued an official receipt x x x. He already considered that as an authority to operate his business x x x and all those years, he was never questioned by the Mayor for operating a business without a permit x x x.[11]

Version of the Defense

After the prosecution rested its case, the defense presented the following two witnesses:

1. Corazon M. Lacap, the accused and elected Mayor of Masantol, Pampanga in May 1998; and
2. Belinda B. Trinidad, the former bookkeeper of Masantol, Pampanga.[12]

As culled from the assailed Decision, Corazon testified that:

She knows the private complainant Santos because she is a kumare whom she considers a friend. Complainant Santos owns a variety store which she allegedly ordered to be closed. The truth was that she did not order the closure of the store because when she assumed her post as a Mayor, Santos' store was already closed by her husband, the former Mayor Epifanio Lacap, way back June 23, 1997 x x x. The reason for the said closure was that x x x Santos was operating without a Mayor's permit, DTI, SSS and that she was not issuing official receipt to their customers x x x.

---

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

[11] *Id*. at 19.

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

x x x x x x x x x

The Office of the Ombudsman, thru a certain Atty. Calderon, wrote her a letter asking her to inform the Ombudsman of whatever action she may have taken with regard to the application of Fermina Santos for a Mayor's Permit x x x.

x x x [I]t was her lawyer who answered the letter of Atty. Calderon. It was stated in the letters that accused Mayor cannot possibly act on the alleged application of complainant Santos for the simple reason that the application was not yet submitted to the Mayor's Office for appropriate action x x x. Her basis is the certification issued by the Treasurer's Office to the effect that there is no application that reached their office for 1999-2000 x x x.[13]

Belinda B. Trinidad, on the other hand, testified that:

She was the former Bookkeeper of the Municipality of Masantol, Pampanga. One of her duties was to process the application for municipal license and to check if the requirements are complete.

Sometime in February, 2000, upon verification with their record book, there was no application for a business permit filed by Fermina Santos x x x. As proof of that statement, she issued a Certification to that effect x x x.

x x x x x x x x x

On March 10, 2000, she again issued a Certification (Exh. 7) stating therein that there is still a missing document that is why the Mayora did not approve the application of Santos x x x.

Way back 1999, there was no application for Municipal license filed by complainant Santos in their office x x x.[14]

The Sandiganbayan Ruling

The Sandiganbayan rendered a Decision[15] dated February 21, 2011 finding the prosecution's evidence sufficient for conviction and holding Corazon guilty beyond reasonable doubt

---

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

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

[15] *Supra* note 1.

of violation of Section 3(f) of RA 3019, and imposed upon her the indeterminate penalty of six (6) years and one (1) day imprisonment as minimum to ten (10) years imprisonment as maximum, with perpetual disqualification from public office.

Corazon filed a motion for reconsideration, which was denied by the Sandiganbayan in its Resolution[16] dated August 4, 2011 for lack of merit and because there were no new matters raised therein.

Aggrieved, Corazon filed the instant petition under Rule 45 of the Rules of Court. The Office of the Special Prosecutor of the Office of the Ombudsman, representing the People of the Philippines, filed its Comment dated March 23, 2012.[17] Corazon then filed a Manifestation with Motion to Admit Attached Reply to Comment.[18] The Office of the Special Prosecutor filed its Memorandum dated March 20, 2014.[19] Corazon filed a Motion to Admit Attached Memorandum dated May 8, 2014.[20]

In a Resolution dated August 17, 2016,[21] this case was transferred from the Third Division to the First Division.

Issues

Corazon raised three issues in her Petition:

(1) whether the Sandiganbayan committed serious misapprehension of facts in having found the accused guilty beyond reasonable doubt of official inaction under Section 3(f) of the Anti-Graft Law;

(2) whether the accused's act of referring the letter of Atty. Calderon to her lawyer for appropriate response constitutes a felony; and

---

[16] *Id*. at 30-36.

[17] *Id*. at 129-182 (with Annexes).

[18] *Id*. at 194-202.

[19] *Id*. at 211-227.

[20] *Id*. at 232-254.

[21] *Id*. at 257.

(3) whether the Sandiganbayan wrongly assumed that the accused acted with criminal intent to discriminate against the private complainant absent any categorical evidence therefor.[22]

The Court's Ruling

There is no merit in Corazon's petition.

The issues raised by Corazon in her petition essentially show that she disputes the existence of the elements of the offense penalized under Section 3(f) of RA 3019, to wit:

[1.] The offender is a public officer;

[2.] The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;

[3.] Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and

[4.] Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.[23]

The resolution of the three issues, therefore, rests upon the existence of sufficient proof to establish the four elements enumerated above.

The first element is not disputed. As the then Municipal Mayor of Masantol, Pampanga, who assumed office on June 30, 1998,[24] Corazon was, at the time of the commission of the offense charged, a public officer.

The second issue raised by Corazon disputes the presence of the second and third elements, while the third issue puts in doubt the fourth element.

---

[22] *Id*. at 46.

[23] *Coronado v. Sandiganbayan*, 296-A Phil. 414, 419 (1993).

[24] Petition, *rollo*, p. 42.

Corazon argues that she did not refuse to act on Fermina's application for a mayor's permit as contained in the transmittal letter of Atty. Calderon (Exh. "N") to Corazon. Corazon deemed it wise to refer the said letter to her retained lawyer, Atty. Andres Pangilinan (Atty. Pangilinan), because of "other pending cases lodged by [Fermina] against [Corazon] in the Regional Trial Court of Macabebe, Pampanga, and the Sangguniang Panlalawigan of Pampanga."[25] Corazon adds that, as a non-lawyer, she had to refer the matter to her lawyer for legal advice "because [to her mind] there were already a number of cases filed by [Fermina] against her involving the same subject matter pending before the courts and other agencies, which may render the issue thereat moot and academic."[26] For Corazon, she made a "POSITIVE AND CATEGORICAL ACT" when she referred Atty. Calderon's letter to her lawyer, Atty. Pangilinan, "in order to appropriately respond to the same."[27] Moreover, Corazon posits that Atty. Pangilinan's response to Atty. Calderon's transmittal letter that "[Fermina] had already withdrawn her application for business permit and, thus, there is no more application to act upon" is proof that Corazon acted on Fermina's application for business permit.

Corazon further argues that there is no direct proof of her criminal intent to discriminate against Fermina "established by the prosecution in this case which is why the [Sandiganbayan] merely relied on the assumption that when [Corazon] referred the letter of [Atty. Calderon] to her lawyer, [Atty. Pangilinan], she simply refused to issue to [Fermina] the Mayor's Permit she was asking for."[28]

The foregoing arguments have been squarely addressed by the Sandiganbayan which found them without merit. The assailed Decision states:

---

[25] Petition, *id*. at 52.

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

[27] *Id*. at 52.

[28] Petition, *id*. at 58.

Accused Lacap acknowledged in open court her receipt of the letter (Exh. N) sent to her by Atty. Calderon with attachments which included Santos' application and other requirements (Exhs. A to L), (TSN, p. 42, July 1, 2009). It is to be noted that Atty. Calderon wrote the Mayor, accused Lacap, and forwarded to the latter all the documents. In that letter, Atty. Calderon stated: "We hope that by this transmittal letter, action on Mrs. Santos' application will now be attended to with dispatch." Accused Lacap did not reply, and instead, simply referred the matter to her lawyer with whom she allegedly consulted (Ibid., p. 49). Having received the documents and necessarily aware of what those documents are, the appreciation of and action on which being within her official competence as Mayor, it was incumbent upon, it was expected of, accused Lacap to act promptly on the matter, given the request that the matter be acted upon with dispatch, and considering prior incidents of rejection of the same application allegedly due to incomplete requirements. It has been held that "Public officials are called upon to act expeditiously on matters pending before them. For only in acting thereon either by signifying approval or disapproval may the plaintiff continue on to the next step of the bureaucratic process. On the other hand, official inaction brings to a standstill the administrative process and the plaintiff is left in the darkness of uncertainty." (Jose V. Nessia vs. Jesus M. Fermin, and Municipality of Victorias, Negros Occidental, G.R. No. 102918, March 30, 1993).

., The duty of accused Lacap as the public official concerned, to act is clear and unambiguous. The situation then obtaining did not call for any legal expertise. There was no need for accused Mayor Lacap to refer the matter to a lawyer for consultation. The Mayor simply had to check if the documents are complete and then act on it. It was obviously a case of refusal to act, and for which we find no justification, as none is extant in the records.

Observably, accused Lacaps acknowledgement of receipt of the documents runs counter to her lawyer's letter-reply to Atty. Calderon which, while acknowledging their receipt of Atty. Calderon's letter dated April 26, 1999, nevertheless, pointed out that the Office of the Mayor could not, "at this point in time" (obviously referring to the time of their receipt of the letter allegedly on May 7, 1999), act on the alleged application for a business permit "for the simple reason that her application was not yet submitted to the Honorable Mayor's Office for appropriate action." (Exh. P; Exh. 8). Considering the inconsistency, it becomes apparent that the lawyer was either misinformed or misled.

In the same letter, the lawyer further stated that upon their inquiry, they discovered that "the application of Fermina Santos which was submitted to the Office of the Treasurer was withdrawn, hence, for all intents and purposes, no more application for business license was formally pending before the Office of the Mayor or even at the Office of the Municipal Treasurer of Masantol Pampanga." Such alleged withdrawal of Santos' application has not been substantiated. The sources of that information have not been disclosed and stated for verification. Defense' (sic) Exh. 6 (Certification issued by Belinda B. Trinidad, Bookkeeper, Office of the Municipal Treasurer, x x x Masantol, Pampanga) indicates that as per records kept on file in their office, certain Ms. Fermina Santos has no pending application for business license for the year 2000 as of this date (February 28, 2000). Likewise, the Certification dated March 10, 2000 issued by the same official (Exh. 7) indicates that Santos' application for business license and business permit was not approved by Mayor Corazon Lacap due to lack of SSS clearance for 2000. x x x Plainly, the certifications do not support the alleged withdrawal of application. It should not be forgotten that the application together with all the supporting documents were directly sent to and received by accused Lacap.

What clearly appears to have been withdrawn by Santos was her administrative charge against accused Lacap in her (Santos') letter to the Sangguniang Panlalawigan dated April 6, 1999 (Exh. O; Exh. 9). In the same letter, Santos stated that she has decided to cease/stop doing business in Masantol, Pampanga, a statement which the Defense took to mean a withdrawal of Santos' application for a business permit. We are not persuaded. Taken in its entirety, the letter directly relates to Santos' withdrawal of her administrative charge. Her decision to stop doing business in Masantol, Pampanga is, as appropriately pointed out by the Prosecution in its Memorandum, "an expression of Ms. Santos' frustrations over the case she filed in said body" (citing TSN, September 1, 2008).

Notably moreover, when confronted by the Chairperson of the Fourth Division of this Court hearing this case with the observation that the truth of the matter is that x x x accused Lacap x x x did not give Santos the Mayor's Permit notwithstanding the documents sent to her by Atty. Calderon x x x, accused Lacap was evasive in her response. Pushed against the wall, she sought to hide behind her lawyer whose services clearly were not called for at that point in time. She merely came up with the following lame response: "My

Lawyer. I consulted my lawyer so he was the one who answered the letter of Atty. Calderon" (TSN, p. 49, July 1, 2009).

Given the foregoing considerations, the conclusion is inevitable, that is, that accused Corazon's inaction on Santos' application was willful and deliberate, and the motive behind the same cannot but be deducible from her (Corazon's) open court admission that Santos filed cases against her, one for Violation of Section 3(e) of R.A. 3019; another for Mandamus in the Regional Trial Court of Macabebe, Pampanga; and an administrative case before the Sangguniang Panlalawigan in San Fernando, Pampanga (TSN, p. 18, July 1, 2009). Prosecution's documentary Exhibits R and V show that Santos filed administrative and criminal case against accused Corazon's husband, Epifanio Lacap in 1998 and 1999. These documented facts bolster the conclusion as aforestated, and correspondingly establish the fact that the deliberate refusal to act is for the purpose of discriminating against Santos. Such discrimination is further made manifest by the testimony of Andres T. Onofre, Jr., who is, like Santos, engaged in the sale of school supplies in Masantol, Pampanga that from 1990 to 1999, he was not able to secure [a] license to operate his store from the Municipality (TSN, January 7, 2009, p. 23). And all those years, he was never questioned by the Mayor from operating a business without a permit (ibid., p. 30).

Perceptibly, the filing of this case was triggered or impelled by the personal animosity between the principal protagonists (complainant Santos and accused Corazon) but the latter should not be unmindful of the fact that she is a public official who is enjoined to respond to the call of her duty with the highest degree of dedication often beyond her own interest (A.M. No. P-97-1241, March 20, 2001, Dinna Castillo vs. Zenaida C. Buencillo). As a public official, she must rise above personal differences, personal conflicts she may have with the public whom she committed to serve.[29]

Corazon raised the same arguments in her Motion for Reconsideration dated March 7, 2011[30] before the Sandiganbayan, but the Sandiganbayan stood its ground and denied the Motion for Reconsideration.

---

[29] CA Decision, *id*. at 24-28.

[30] Motion for Reconsideration, *id*. at 65-75.

In its Resolution[31] dated August 4, 2011 (Resolution), the Sandiganbayan reasoned out:

> Notably, no new matters have been raised by the accused to warrant a reconsideration of the judgment rendered in this case. The arguments reiterated and later amplified, failed to convince.
>
> The judgment of conviction was not based on mere assumptions simply conjured up. Accused's guilt for the offense charged was based on and/or drawn from facts which have been established.
>
> 1. There was inaction on Santos' application for the business permit, prompting Santos to seek the assistance of the Public Assistance Bureau of the Office of the Ombudsman. The inaction became more perceptibly deliberate when, despite receipt from Atty. Calderon of the Ombudsman's Public Assistance Bureau of the letter-request for immediate action, accused Mayor still did not take action on the application, neither on the request. The only official action required of her by law as the Municipal Mayor was to either approve or disapprove the application. She did neither, but simply referred the letter to her lawyer even when nothing demanded referral to a lawyer. That referral was not the official action contemplated by the law in that situation. That referral is inaction which, however, is not the same as, nor can it be equated with, disapproval.
>
> 2. To constitute a violation of Sec. 3(f), R.A. 3019, the inaction on the part of the public official is not solely for the purpose of obtaining some gain, benefit or advantage for him (accused public officer). It may also be for the purpose of discriminating against another (Coronado vs. Sandiganbayan, 44 SCAD 21).
>
> x x x x x x x x x
>
> Accused had the motive to discriminate against the private complainant, and this has not been simply assumed or surmised, but drawn from facts which have been established, documented, and even admitted by the accused (as discussed in pages 18 and 19 of the assailed Decision).[32]

---

[31] Also rendered by the Sandiganbayan Fourth Division and was penned by Associate Justice Maria Cristina J. Cornejo, with Associate Justices Gregory S. Ong and Jose R. Hernandez concurring; *id*. at 30-36.

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

The Court completely agrees with the findings and ruling of the Sandiganbayan.

The Constitution mandates that: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[33] Thus, "[they] are called upon to act expeditiously on matters pending before them. For only in acting thereon either by signifying approval or disapproval may the [public] continue on to the next step of the bureaucratic process. On the other hand, official inaction brings to a standstill the administrative process and the [public] is left in the darkness of uncertainty."[34]

In an application for a mayor's permit or license to do business in a municipality or city, the procedure is fairly standard and uncomplicated. It requires the submission of the required documents and the payment of the assessed business taxes and fees. In case of failure to comply with the requirements, the application deserves to be disapproved. If the application is compliant, then approval is the action to be taken. An inaction or refusal to act is a course of action anathema to public service with utmost responsibility and efficiency. If the deliberate refusal to act or intentional inaction on an application for mayor's permit is motivated by personal conflicts and political considerations, it thus becomes discriminatory, and constitutes a violation of the Anti-Graft and Corrupt Practices Act.

The authority of the mayor to issue licenses and permits is not ministerial, it is discretionary. In *Roble Arrastre, Inc. v. Villaflor*,[35] the Court held:

> The crux of the instant controversy is whether respondent mayor can be compelled by a writ of *mandamus* to grant petitioner's application for a renewal of a business permit to operate an arrastre service at the Municipal Port of Hilongos in Leyte.

---

[33] CONSTITUTION, Article XI, Section 1.

[34] *Nessia v. Fermin*, 292-A Phil. 753, 760 (1993).

[35] 531 Phil. 30 (2006).

Ostensibly, it is petitioner's contention that respondent mayor's power to issue permits as contained in the aforesaid law [Republic Act No. (RA) 7160, otherwise known as the Local Government Code of 1991] is ministerial; hence, *mandamus* lies.

x x x x x x x x x

x x x [W]e make a determination of the nature of the power of respondent mayor to grant petitioner a permit to operate an arrastre service. Central to the resolution of the case at bar is a reading of Section 444(b)(3)(iv) of the Local Government Code of 1991, which provides, thus:

SEC. 444. *The Chief Executive: Powers, Duties, Functions and Compensation*.

(b) For efficient, effective d economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to *Section 16 of this Code*, the Municipal mayor shall:

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x x x x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance. (Italics supplied.)

As Section 444(b)(3)(iv) so states, the power of the municipal mayor to issue licenses is pursuant to Section 16 of the Local Government Code of 1991, which declares:

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.
>
> Section 16, known as the general welfare clause, encapsulates the delegated police power to local governments. Local government units exercise police power through their respective legislative bodies. Evidently, the Local Government Code of 1991 is unequivocal that the municipal mayor has the power to issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance. x x x
>
> x x x x x x x x x
>
> x x x What can be deduced from [Section 444(b)(3)(iv)] is that the limits in the exercise of the power of a municipal mayor to issue licenses, and permits and suspend or revoke the same can be contained in a law or an ordinance. Otherwise stated, a law or an ordinance can provide the conditions upon which the power of the municipal mayor under Section 444(b)(3)(iv) can be exercised. x x x
>
> x x x x x x x x x
>
> Section 444(b)(3)(iv) of the Local Government Code of 1991, whereby the power of the respondent mayor to issue license and permits is circumscribed, is a manifestation of the delegated police power of a municipal corporation. Necessarily, the exercise thereof cannot be deemed ministerial. x x x[36]

While a discretionary power or authority of Corazon, as the then Municipal Mayor of Masantol, Pampanga, is involved in this case, its exercise must be pursuant to law and ordinance. The mayor must act on the application for a business permit, and as correctly pointed out by the Sandiganbayan, the action expected of the mayor was either to approve or disapprove the same.

---

[36] *Roble Arrastre, Inc. v. Villaflor*, *id*. at 43-46.

When Corazon referred to her lawyer, Atty. Pangilinan, the transmittal letter of Atty. Calderon, **to which Fermina's application for mayor's permit and supporting documents were attached**, Corazon did not act according to law or ordinance. Indeed, she failed to cite any law or ordinance which required her to do so. Her purported good faith belief that the cases which Fermina had filed against her and her husband had a bearing on Fermina's application for mayor's permit is not borne out, and actually belied, by Atty. Pangilinan's reply to Atty. Calderon's letter which made no mention of those pending cases. Rather than being a proof of "POSITIVE AND CATEGORICAL ACT"[37] as claimed by Corazon in her Petition, the reply letter shows that Corazon merely dribbled the ball, so to speak, and made Corazon's deliberate refusal to act on Fermina's application for business/mayor's permit and her motive clear and patent.

The reply letter emphasized that Fermina had no pending application and considering the non-existence of her application, how could Corazon act on a non-existing application; and advised Fermina to re-apply for a business permit. But the reply letter ignored Atty. Calderon's supplication: "We hope that by this transmittal letter, action on Mrs. Santos' application will now be attended to with dispatch."[38] The reply letter even made no reference to the application of Fermina and supporting requirements that were attached to Atty. Calderon's transmittal letter. There is no question then, to the mind of the Court, that Corazon simply ignored Fermina's application for mayor's permit and its supporting documents. There is likewise no doubt that the act of Corazon in referring the matter to her lawyer was merely a ploy to mask her refusal to act and avoid possible sanction for her inaction.

The purported advice for Fermina to re-apply for a business permit in the face of the duly filled-up application and supporting documents attached to Atty. Calderon's letter, as well as the

---

[37] *Supra* note 27.

[38] *Id*. at 24.

express supplication for an action with dispatch on the application unequivocally show the intentional inaction or deliberate refusal to act on Corazon's part.

That discrimination underlied this refusal is also apparent in the reply letter, which states:

> After going over your letter, it is clear that Mrs. Fermina Santos is merely using your office to harass the Honorable Mayor of Masantol. x x x Mrs. Fermina Santos concealed vital informations (sic) regarding her application for business license and to enlighten your office, under date of April 06, 1999, the Office of the Mayor was copy furnished of a letter addressed to the Acting-Vice Governor of the Sangguniang Panlalawigan, wherein in the said letter, Fermina Santos categorically stated she decided to cease/stop doing business in Masantol, Pampanga and several days thereafter she withdrew her application for business license in the Municipality of Masantol, Pampanga.[39]

Assuming that Fermina indeed had evil motives in seeking the intervention of the Office of the Ombudsman, Corazon, being the public officer tasked to issue municipal permits and licenses, was expected to rise above personal conflicts and political rivalries and act pursuant to the applicable law and ordinance. The actuations of Corazon vis-à-vis Fermina, being a political rival, should have been above board and circumspect to forestall any complaint from Fermina of political vendetta. The alleged withdrawal of Fermina's application on April 6, 1999 clearly has no bearing on her application for mayor's permit attached to the transmittal letter of Atty. Calderon dated April 26, 1999. Corazon should have thus acted on Fermina's application as transmitted.

In her Petition, Corazon says:

> A perusal of her application in 1999 which was marked by the prosecution as Exhibit "A", will instantly reveal that it does not bear any rubber stamp marking which would show that the same was either

---

[39] Annex "15", Comment (*To the Petition of Corazon M. Lacap dated October 3, 2011*), *rollo*, p. 181; underscoring supplied.

received officially by the Municipal Assessor's Office or the Office of the Municipal Mayor. Also, it is the original application itself, which could only mean that, indeed, she carried with her the application and had never filed the same.

x x x x x x x x x

In fact, a deep perusal of the attachments in the application for business permit submitted by the complainant to Atty. Calderon, it instantly reveals that the complainant has not paid the Mayor's Permit fee in 1998 inasmuch as the Official Receipts which she presented and marked by the prosecution as Exhs. "K" and "L" are official receipts pertaining to the year 1998. x x x[40]

This argument does not convince. If the defects in the application and supporting requirements attached to Atty. Calderon's transmittal letter were so obvious, then Corazon could have easily disapproved Fermina's application. She did not do this. Instead, Corazon referred the matter to her personal lawyer. Rather than advance her cause, those allegations in her Petition continue to make obvious the criminal intent to discriminate against Fermina, her political rival, which animated her deliberate refusal to act or intentional inaction on Fermina's application for a business/mayor's permit.

WHEREFORE, the Court **AFFIRMS** the Decision of the Sandiganbayan promulgated on February 21, 2011 in Crim. Case No. SB 08-CRM-0030 finding accused Corazon Mallari Lacap **GUILTY** beyond reasonable doubt of Violation of Section 3(f) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, and imposing upon her the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month imprisonment, as minimum, to ten (10) years imprisonment, as maximum, with perpetual disqualification from public office.

SO ORDERED.

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

---

[40] Petition, *id*. at 48-50.

FIRST DIVISION

[G.R. No. 202086. June 21, 2017]

NORMAN PANALIGAN, IRENEO VILLAJIN, and GABRIEL PENILLA, *petitioners, vs.* **PHYVITA ENTERPRISES CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; SERIOUS MISCONDUCT, AS A JUST CAUSE THEREFOR MUST BE OF SUCH A GRAVE AND AGGRAVATED CHARACTER AND NOT MERELY TRIVIAL OR UNIMPORTANT; REQUIREMENTS.— In *Maula v. Ximex Delivery Express, Inc.*, this Court reiterated previous pronouncements on the nature of serious misconduct as a just cause to terminate an employee according to the Labor Code. To quote: Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

2. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, AS A JUST CAUSE THEREFOR IS PREMISED ON THE FACT THAT AN EMPLOYEE CONCERNED HOLDS A POSITION WHERE GREATER TRUST IS PLACED BY MANAGEMENT AND FROM WHOM GREATER FIDELITY ON DUTY IS CORRESPONDINGLY EXPECTED.— [L]oss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence

of the offense for which an employee is penalized. Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee. Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: (1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or (2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property. In any of these situations, it is the employee's breach of the trust that his or her position holds which results in the employer's loss of confidence.

3. ID.; ID.; ID.; ID.; EMPLOYEE MUST BE GUILTY OF AN ACTUAL AND WILFULL BREACH OF DUTY DULY SUPPORTED BY SUBSTANTIAL EVIDENCE.— For an employer to validly dismiss an employee on the ground of loss of trust and confidence under Article 282(c) of the Labor Code, the employer must observe the following guidelines: 1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. More importantly, it must be based on a willful breach of trust and founded on clearly established facts. Thus, in order to dismiss an employee on the ground of loss of trust and confidence, the employee must be guilty of an actual and willful breach of duty duly supported by substantial evidence. Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion. In termination cases, the

burden of proof rests on the employer to show that the dismissal is for a just cause.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE DISPUTABLE PRESUMPTION THAT A PERSON FOUND IN POSSESSION OF A THING TAKEN IN THE DOING OF A RECENT WRONGFUL ACT IS THE TAKER OR DOER OF THE WHOLE ACT IS LIMITED TO CASES WHERE SUCH POSSESSION IS EITHER UNEXPLAINED OR THAT THE PROFERRED EXPLANATION IS RENDERED IMPLAUSIBLE IN VIEW OF INDEPENDENT EVIDENCE INCONSISTENT THERETO; NOT PRESENT IN CASE AT BAR.— PHYVITA argues that, being in possession of stolen items, PANALIGAN, *et al.*, are presumed to have stolen the same unless contradicted or overcome by other evidence as mandated by Rule 131, Section 3(j) of the Revised Rules on Evidence, to wit: x x x We have held that the application of the disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act is limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto. In the present case, petitioners' possession of the questioned payroll sheets was explained by the sworn affidavit of former PHYVITA employee Allan Grasparil (Grasparil) who freely admitted that he was the source of the documents which he allegedly received from Enriquez. Significantly, PHYVITA proffered no counter-statement from Enriquez specifically refuting Grasparil's narrative.

5. ID.; ID.; EVEN IN LABOR CASES, ONE WHO PLEADS PAYMENT HAS THE BURDEN OF PROVING IT; CASE AT BAR.— We agree with the NLRC that PHYVITA should be liable for PANALIGAN, *et al.*'s, claims for underpaid salaries that had not yet prescribed at the time of the filing of the complaint. Moreover, it is settled even in labor cases that "one who pleads payment has the burden of proving it. Even where the plaintiff must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment." In another case, we upheld the NLRC's ruling that the burden of proof rests on the employer to show that it has not committed any violation of labor standard

laws, in particular the full payment of the legally mandated wages. If PHYVITA had truly paid PANALIGAN, *et al.*, their correct wages, it had every opportunity to produce all relevant payrolls and documents in the proceedings below instead of merely submitting incomplete documents relating to February 2005 salaries, 13th month pay and service incentive leave.

APPEARANCES OF COUNSEL

R.P. Acorda & Associates for petitioners.
Cabio Law Office & Associates for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Court of Appeals Decision[1] dated November 24, 2011 and Resolution[2] dated May 29, 2012 in CA-G.R. SP No. 111653, entitled "*Phyvita Enterprises Corporation v. National Labor Relations Commission, Norman Panaligan, Ireneo Villajin, Gabriel Penilla*." The former issuance reversed and set aside the Decision[3] dated June 9, 2009 as well as the Resolution[4] dated September 25, 2009 of the National Labor Relations Commission (NLRC) which essentially ruled that petitioners Norman Panaligan, Ireneo Villajin and Gabriel Penilla (PANALIGAN, *et al.*) were illegally dismissed from their employment by respondent Phyvita Enterprises Corporation (PHYVITA) and were entitled to various monetary awards. The Court of Appeals, thus, reinstated the Labor Arbiter's July 31,

---

[1] *Rollo*, pp. 45-59; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Josefina Guevara-Salonga and Fiorito S. Macalino concurring.

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

[3] *Id*. at 84-96.

[4] *Id*. at 97-99.

2007 Decision[5] which dismissed the complaint for illegal dismissal but held that petitioners were entitled to payment of salary differential. The May 29, 2012 Court of Appeals Resolution, on the other hand, denied for lack of merit PANALIGAN, *et al.*'s, motion for reconsideration.

We restate the salient facts as narrated in the assailed November 24, 2011 Court of Appeals Decision here:

> Petitioner Phyvita Enterprises Corporation x x x [respondent herein] is a domestic corporation organized and existing under the [sic] Philippine laws engaged in the business of health club massage parlor, spa and other related services under the name and style of Starfleet Reflex Zone ("Starfleet").
>
> Private respondents [petitioners herein] Norman Panaligan ("Panaligan"), Ireneo Villajin ("Villajin") and Gabriel Penilla ("Penilla") x x x were the employees of Phyvita assigned as Roomboys at Starfleet. Panaligan was hired last 1 March 2002. Villajin was hired last 22 October 2002 and Penilla was hired on 22 October 2002.
>
> Sometime [on] 25 January 2005, the Finance Assistant of Phyvita for Starfleet Girly Enriquez ("Enriquez") discovered that the amount of One Hundred Eighty Thousand Pesos (Php180,000.00) representing their sales for 22nd, 23rd and 24th of January 2005 [was] missing including receipts, payrolls, credit card receipts and sales invoices. She immediately reported the same to her immediate superior Jorge Rafols ("Jorge Rafols"). As such, they searched for the missing documents and cash. However, their search remained futile.
>
> On 26 January 2005, Jorge Rafols and Enriquez reported the incident to their Vice President for Operations Henry Ting ("Henry Ting").
>
> As advised by Phyvita's Legal Officer Maria Joy Ting ("Joy Ting"), they reported the alleged theft incident to the Parañaque City Police Station to conduct an investigation. However, the Parañaque Police were not able to gather sufficient information that would lead them as to who committed said theft. Being unsuccessful, the said police investigation was merely entered into the police blotter.
>
> On 4 April 2005, while the police investigation was pending, [Petitioners] together with other employees, namely, Terio Arroyo

---

[5] *Id*. at 123-128.

("Arroyo"), Nilo Mangco ("Mangco"), Bruce Maranquez ("Maranquez"), Michael Lachica ("Lachica"), Allan Grasparil ("Grasparil"), Allan Rose ("Rose"), Angelo Bernales ("Bernales"), Roberto Reyes ("Reyes"), Rommel Garcia ("Garcia"), Jay Ar Kasing ("Kasing"), Manuel Marquez ("Marquez") and Arnel Pullan ("Pullan") filed a complaint before the Department of Labor and Employment (DOLE) — National Capital Region (NCR) against Starfleet docketed as NCR 00-0504-IS-002. Their complaint was based on the alleged underpayment of wages, nonpayment of legal/special holiday, five (5)-day service incentive leave pay, night shift differential pay, no pay slip, signing of blank payroll, withheld salary due to non-signing of blank payroll.

Acting on the said complaint, on 13 April 2005, an inspection was conducted by the DOLE-NCR through its Labor and Employment Officers Augusto Gwyne C. Lasay and Edgar B. Bumanglag.

In the interim, on 28 April 2005, individual Office Memoranda were issued by Starfleet's Assistant Operations Manager Jerry Rafols ("Jerry Rafols") against [Petitioners] directing them to explain in writing why no disciplinary action shall be imposed against them for alleged violation of Class D1.14 of Starfleet's rules and regulation[s], particularly any act of dishonesty, whether the company has incurred loss or not[,] more specifically their alleged involvement in a theft wherein important documents and papers including cash were lost which happened last 25 January 2005 at [Phyvita]'s establishment. [Petitioners] were, likewise, placed on preventive suspension pending the investigation of the said alleged theft they committed. They were even asked to report at Phyvita on the 3rd, 9th and 10th of May 2005, respectively. Upon personal service of the said Office Memoranda, the said employees refused to receive the same.

Acting on the said Office Memoranda, only Panaligan submitted his hand written explanation which merely stated "wala ako kinalaman sa ibinibintang [sakin]."

Come the scheduled administrative hearing dates, [Petitioners] failed to attend the same. As such, Human Resource Department Manager of Phyvita Leonor Terible issued Office Memoranda against the same employees recommending them to participate in the administrative proceedings that Phyvita will conduct.

Having failed to participate in the investigation proceedings conducted by Phyvita, Memoranda dated 26 May 2005 were issued

against [Petitioners] informing them that they are terminated from their employment on the ground that they violated the company's rules and regulation[s] by stealing company documents and cash. They were also informed that such termination is without prejudice to the filing of criminal charges against them.

On 17 June 2005, Arroyo, Mangco, Maranquez, Lachica and Grasparil agreed to settle their claims, in the complaint filed before the DOLE-NCR, by way of Quitclaim and Releases duly executed before Senior Labor and Employment Officer Marilou D. Tumanguil.

On 28 June 2005, Phyvita, as represented by Enriquez, filed a criminal complaint for theft against [Petitioners] including Marquez, Lorenzo, Devanadero and Rose before the Office of the City Prosecutor of Parañaque.

On 31 July 2005, by virtue of the aforesaid Quitclaim and Releases, the said complaint before the DOLE-NCR, in so far as the [Petitioners], Rose, Bernales, Reyes, Garcia, Kasing, Marquez and Pullan are concerned, was endorsed to the NCR Arbitration Branch of the NLRC for proper proceedings.

On 30 September 2005, the criminal complaint was dismissed by 3rd Assistant City Prosecutor Antonietta Pablo-Medina there being no sufficient evidence submitted by the parties to warrant the finding of the crime of theft against aforesaid employees.

On 14 November 2006, [Petitioners] filed the complaint with the NLRC alleging, inter alia, illegal dismissal and payment of separation pay.

On 9 January 2007, they amended their complaint claiming for reinstatement and payment of full backwages, instead of their previous claim for separation pay. The case was docketed as NLRC NCR 00-11-09431-06.

Conciliation failed, thus, the parties submitted their respective Position Papers and Reply.

In their Position Paper and Reply, the [Petitioners] argue that, as room boys of Starfleet, they were required to report for work from 10 am to 7 pm as morning shift, 6 pm to 3 am as evening shift and 8 pm to 5 am as closing shift. They were also required to work six (6) days a week, including holidays, without any overtime pay, holiday pay, premium pay for holiday and rest day and service incentive leave pay. For their salary, they were only receiving a basic monthly

salary of Php3,600.00 or Php138.00 per day. Being underpaid of their basic salary, their 13th month pay were likewise underpaid. They were also not given their pro-rated 13th month pay after their illegal dismissal last 2005. They also claim that Starfleet requires their employees to sign blank payroll sheets before their salaries are given to them. They also assert that their termination was a mere retaliatory measure on the part of Starfleet because they have filed a complaint before the DOLE and refused to amicably settle the same. They claim that to unjustly accuse them of stealing would be a violation of Article 118 of the Labor Code. Their dismissal was, likewise, in violation of the requirements provided by law and jurisprudence to validly terminate them. The charge of theft against them was baseless. In fact, the said criminal complaint against them was dismissed by the City Prosecutor for the simple reason that there was no direct, solid or concrete proof directing them to the commission of theft. Starfleet also has no basis to terminate them on the ground of loss of trust and confidence since said ground for dismissal was without any basis or proof.

Starfleet, Jorge Rafols and [Joy] Ting, on the other hand, stated in their Position Paper and Reply that [Petitioners] got involved in the theft of important office documents and other valuable items on 25 January 2005. They were given an opportunity to explain themselves through Memoranda but they refused to receive and acknowledge the same. They also did not appear during the administrative investigations. They claim that [Petitioners'] dismissal were legal under Article 282 of the Labor Code since the commission of theft is a serious misconduct and an act which gives rise to fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. Thus, it is a sufficient ground to justify their dismissal. The dismissal of the criminal complaint against [Petitioners] is immaterial since they were still validly dismissed based on breach of trust. They even alleged that the filing of the instant labor complaint was a mere afterthought. In support of their claim that the employees were paid according to the mandated wage and benefits, they presented copies of their payroll sheets. On the alleged double bookkeeping, Starfleet countered the said allegation by stating that said blank payroll sheets does not prove anything primarily because they were not signed by the manager nor the payroll officer and does not contain any data. These blank payroll sheets were even the subject of the crime of theft which Starfleet filed against [Petitioners]. The fact that the blank payroll sheets are in their

possession establishes the fact that they unquestionably committed the crime of theft.[6]

Labor Arbiter Jose G. De Vera declared in his Decision dated July 31, 2007 that PANALIGAN, *et al.*, were legally terminated from employment on the ground of loss of trust and confidence. The dispositive portion of said judgment reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to pay the complainants the sum of ₱29,000.00 each, or the aggregate sum of ₱87,000.00 as salary differential.
>
> All other claims, including the charge of illegal dismissal are dismissed for lack of merit.[7]

Upon appeal by PANALIGAN, *et al.*, the aforementioned ruling was reversed and set aside by the NLRC in its Decision dated June 9, 2009. The NLRC arrived at the conclusion that PANALIGAN, *et al.*, were illegally dismissed from employment, thus, ordering the following:

> ACCORDINGLY, the appealed Decision is hereby REVERSED and SET ASIDE and a new one is ENTERED declaring complainants to be illegally terminated whereby respondent-appellees Starfleet Reflex Zone/Jorge Rafols and [Joy] Ting liable to pay complainants their separation pay in the amount of Php69,524.00, Php69,524.00 and Php69,524.00 and; backwages in the amount of Php473,425.17, Php473,425.17 and Php473,425.17, respectively. Further, respondents are ordered to pay complainants their salary differentials in the amount of Php48,251.84, Php48,251.84 and Php48,251.84, respectively. And, the amount of Php6,000.00, Php6,000.00 and Php6,000.00, representing their respective unpaid salaries for the period of April 1-28, 2005.[8]

The NLRC subsequently denied PHYVITA's motion for reconsideration through a Resolution dated September 25, 2009.

---

[6] *Id*. at 46-50.

[7] *Id*. at 128.

[8] *Id*. at 95.

Thus, PHYVITA elevated this case to the Court of Appeals. The appellate court reversed the NLRC issuances and reinstated the July 31, 2007 Decision of the Labor Arbiter, to wit:

> WHEREFORE, the instant petition is hereby GRANTED. The assailed Decision dated 09 June 2009 and Resolution 25 September 2009 issued by the National Labor Relations Commission are REVERSED and SET ASIDE. The Decision dated 31 July 2007 of Labor Arbiter Jose G. De Vera is hereby REINSTATED.[9]

A motion for reconsideration filed by PANALIGAN, *et al.*, was denied for lack of merit by the Court of Appeals in its Resolution dated May 29, 2012.

Hence, PANALIGAN, *et al.*, filed the present petition with this Court relying on the following grounds in support of the same:

I.

WITH ALL DUE RESPECT, THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING THE JUDGMENT AWARD FOR SALARY DIFFERENTIALS AND UNPAID SALARIES WHEN THE BASIS FOR THE SAME WAS NOT EVEN DISCUSSED IN ITS DECISION.

II.

WITH UTMOST DEFERENCE, THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT RESPONDENT HAD SUBSTANTIALLY PROVEN THE LEGALITY OF PETITIONERS' DISMISSAL DUE TO SERIOUS MISCONDUCT DESPITE THE LACK OF CONVINCING EVIDENCE SHOWING THEIR INVOLVEMENT IN THE ALLEGED INCIDENT OF THEFT AND THE LACK OF CONCRETE PROOF THAT THE PAYROLLS WERE PART OF THE STOLEN ITEMS.

III.

WITH UTMOST DEFERENCE, THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT

---

[9] *Id*. at 58.

RESPONDENT HAD SUBSTANTIALLY PROVEN THE LEGALITY OF PETITIONERS' DISMISSAL DUE TO LOSS OF TRUST AND CONFIDENCE DESPITE THE FACT THAT IT IS SIMULATED, USED AS A SUBTERFUGE FOR ILLEGAL ACTION, ARBITRARILY ASSERTED AND A MERE AFTERTHOUGHT.[10]

PANALIGAN, *et al.*, argued that the assailed November 24, 2011 Decision of the Court of Appeals failed to state any factual, legal and equitable justification why the NLRC's monetary awards for salary differential and unpaid salaries were also set aside. They likewise asserted that theft, as the basis of their purported serious misconduct, was not established by evidence since, according to them, the ruling of the Court of Appeals failed to state how the alleged theft was committed by them and what evidence can be found on record to support such finding. Lastly, they maintained that the alleged theft was utilized by PHYVITA as a subterfuge to justify their dismissal without adequate cause. They characterized the criminal complaint against them as a retaliatory action by PHYVITA for their refusal to settle and withdraw the complaint they filed with the Department of Labor and Employment — National Capital Region Office (DOLE-NCR) for underpayment of wages and nonpayment of other labor standard benefits.

On the other hand, PHYVITA claimed that the Court of Appeals correctly ruled that there were just causes to dismiss PANALIGAN, *et al.*, from their employment; namely, serious misconduct and loss of trust and confidence. PHYVITA contended that, despite the dismissal by the Office of the City Prosecutor of Parañaque of the criminal complaint for theft against PANALIGAN, *et al.*, on the ground of lack of probable cause, there was substantial evidence to support a valid dismissal from employment as ruled by the Court of Appeals. PHYVITA maintained that PANALIGAN, *et al.*'s possession of stolen payroll slips is sufficient to justify the termination of PANALIGAN, *et al.*

---

[10] *Id.* at 19.

After an assiduous evaluation of the parties' submissions, we find the petition meritorious.

The fundamental question that needs to be resolved in this case is whether or not there exists just and valid cause for the termination of PANALIGAN, *et al.*'s, employment by PHYVITA. A review of the conflicting findings on this matter by the Labor Arbiter and the Court of Appeals, on one hand, and the NLRC, on the other, yields the conclusion that the allegations of **serious misconduct** and **loss of trust and confidence** against PANALIGAN, *et al.*, cannot be upheld.

The applicable provision of law to this case is Article 297 of the Labor Code, as amended, which states:

ARTICLE 297. *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 representative; and

(e) Other causes analogous to the foregoing. (Emphases supplied.)

In *Maula v. Ximex Delivery Express, Inc.*,[11] this Court reiterated previous pronouncements on the nature of serious misconduct as a just cause to terminate an employee according to the Labor Code. To quote:

Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within

[11] G.R. No. 207838, January 25, 2017.

the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

On the other hand, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.[12] Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[13]

Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: (1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or (2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money

---

[12] *Cocoplans, Inc. v. Villapando*, G.R. No. 183129, May 30, 2016.

[13] *Venzon v. ZAMECO II Electric Cooperative, Inc.*, G.R. No. 213934, November 9, 2016.

or property. In any of these situations, it is the employee's breach of the trust that his or her position holds which results in the employer's loss of confidence.[14]

For an employer to validly dismiss an employee on the ground of loss of trust and confidence under Article 282(c) of the Labor Code, the employer must observe the following guidelines: 1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. More importantly, it must be based on a willful breach of trust and founded on clearly established facts.[15]

Thus, in order to dismiss an employee on the ground of loss of trust and confidence, the employee must be guilty of an actual and willful breach of duty duly supported by substantial evidence.[16] Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion.[17]

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause.[18] In the case at bar, PHYVITA failed to adduce substantial evidence that would clearly demonstrate that PANALIGAN, *et al.*, have committed serious misconduct or have performed actions that would warrant the loss of trust and confidence reposed upon them by their employer. Contrary to the findings of the Court of Appeals

---

[14] *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, G.R. No. 202621, June 22, 2016.

[15] *Continental Micronesia, Inc. v. Basso*, G.R. Nos. 178382-83, September 23, 2015, 771 SCRA 329, 351, citing *Apo Cement Corporation v. Baptisma*, 688 Phil. 468, 480-481 (2012).

[16] *Leo's Restaurant and Bar Cafe v. Densing*, G.R. No. 208535, October 19, 2016.

[17] *Mamba v. Bueno*, G.R. No. 191416, February 7, 2017.

[18] *Turks Shawarma Co. v. Pajaron*, G.R. No. 207156, January 16, 2017.

and the Labor Arbiter, no substantial evidence supports the allegation of theft leveled by PHYVITA against PANALIGAN, *et al.* — the said criminal act being the underlying reason for the dismissal of the latter from being employees of the former.

The records of this case clearly indicate that no direct evidence was presented to link PANALIGAN, *et al.*, to the theft that they allegedly committed. In fact, the questioned payroll sheets that PANALIGAN, *et al.*, attached to the labor complaint they filed before the DOLE-NCR are the only concrete proof that PHYVITA used to support its allegation. However, the said documents were not specifically enumerated as among the stolen items in the police report[19] of the alleged incident of theft, while a previous incident report[20] merely stated that "several copies of payroll" were taken. PHYVITA first claimed that these payroll sheets allegedly stolen from Enriquez's safekeeping were the same ones in PANALIGAN, *et al.*'s, possession when its employee, Jesse Pangilinan (Pangilinan), executed an affidavit[21] to that effect right after attending a preliminary hearing of the labor case initiated by PANALIGAN, *et al.* Pangilinan's statement was supported by the joint affidavit[22] made by Rommel Garcia (Garcia) and Jay-R Kasing (Kasing) who were also in PHYVITA's employ.

The problem with Pangilinan's statement is that it is self-serving since it favors his employer which is involved in a labor dispute with PANALIGAN, *et al.*, and it does not show criminal liability since it only establishes PANALIGAN, *et al.*'s, possession of the questioned payroll sheets but not the fact that they themselves stole the same.

Furthermore, Pangilinan's statement is inconsistent with the other facts on record. According to Pangilinan's affidavit, he only knew that the questioned payroll sheets were in the

---

[19] *Rollo*, p. 222.

[20] *Id*. at 221.

[21] *Id*. at 176-177.

[22] *Id*. at 178-179.

possession of PANALIGAN, *et al.*, when they presented the same during the May 29, 2005 DOLE-NCR hearing.[23] The aforementioned date is crucial to this case because the month before, or on April 28, 2005, PANALIGAN, *et al.*, were preventively suspended from work by PHYVITA and given written notices to explain in writing within twenty-four (24) hours why they should not face disciplinary sanction for their alleged involvement in the January 25, 2005 incident of theft.[24] Due to their non-appearance at the scheduled in-house investigation and conference, PANALIGAN, *et al.*, were then served individual notices dated May 26, 2005, that they were terminated from PHYVITA's employ for their alleged participation in the theft.[25] Thereafter, sometime in June 2005, Garcia and Kasing purportedly came forward and pointed to PANALIGAN, *et al.*, as among the perpetrators of the alleged theft. Considering the said chronology of events, there was no clear ground for PHYVITA to preventively suspend and later terminate the services of PANALIGAN, *et al.*, when the company's actions predated the bases for doing so — the discovery of the questioned payroll sheets by Pangilinan allegedly on May 29, 2005 as stated in his affidavit and the revelations of Garcia and Kasing allegedly made sometime in June 2005. Alternatively stated, respondent company had charged and terminated PANALIGAN, *et al.*, before it had even obtained its supposed "proof" of their misdeed.

To be sure, the joint affidavit of Garcia and Kasing deserves scant consideration because it contains statements which are hearsay. They merely claimed that another employee, Arnel Pullan, told them that PANALIGAN, *et al.*, were part of the group that stole the questioned payroll sheets from the Executive Office. Evidently, they did not have personal knowledge of the alleged theft. Furthermore, their claim was flatly denied

---

[23] In other parts of the record, the date of the hearing was purportedly May 23, 2005.

[24] *Rollo*, pp. 150-156.

[25] *Id.* at 165-167.

by PANALIGAN, *et al*. It is likewise interesting to note that Garcia and Kasing were former co-complainants of PANALIGAN, *et al.*, in the labor case at issue but later withdrew from pursuing it after entering into a compromise agreement with PHYVITA along with six other complainants. Premises considered, their statements cannot be fully relied upon because it is highly probable that the same may have been secured in exchange for some consideration.

Similarly, the complaint-affidavit[26] of Girly Enriquez (PHYVITA's Finance Assistant) and the affidavit of Jorge Rafols (PHYVITA's Operations Manager) rely heavily on the assertions made by Pangilinan, Garcia and Kasing in order for said affiants to arrive at their conclusion that PANALIGAN, *et al.*, were responsible for the incident of theft. They did not personally witness the commission of the alleged theft by PANALIGAN, *et al.* In fact, none of PHYVITA's witnesses did as Pangilinan merely provided doubtful circumstantial evidence and Garcia and Kasing put forward corroborating testimony that is undoubtedly hearsay and not of their personal knowledge. Given these circumstances, these affidavits executed by PHYVITA's officers cannot be given probative weight.

PHYVITA argues that, being in possession of stolen items, PANALIGAN, *et al.*, are presumed to have stolen the same unless contradicted or overcome by other evidence as mandated by Rule 131, Section 3(j) of the Revised Rules on Evidence, to wit:

> SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him[.]

---

[26] *Id*. at 169-172.

We have held that the application of the disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act is limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto.[27] In the present case, petitioners' possession of the questioned payroll sheets was explained by the sworn affidavit of former PHYVITA employee Allan Grasparil (Grasparil) who freely admitted that he was the source of the documents which he allegedly received from Enriquez. Significantly, PHYVITA proffered no counter-statement from Enriquez specifically refuting Grasparil's narrative.

The June 9, 2009 Decision of the NLRC made use of Grasparil's testimony to support its finding that no substantial evidence was shown to prove that PANALIGAN, *et al.*, were guilty of theft and that they were illegally dismissed from employment, explaining thus:

> Notably, a former employee of respondent-appellees by the name of Mr. Allan Grasparil explained that a co-employee, Ms. Girly Enriquez, approached him on January 25, 2005 and required him to sign a payroll sheet. Further, he was also directed to let his other co-workers to sign the same and to thereafter return it to her. However, he failed to return the said document. That when they filed a complaint before the DOLE he allegedly remembered the payroll sheet and they used it as evidence (p. 120, record). Remarkably, this crucial statement of Mr. Grasparil was not disputed by respondents-appellees. Hence, deemed admitted pursuant to Section 32, Rule 130 of the Revised Rules on Evidence, to wit:
>
> > An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.[28]

---

[27] *People v. Urzais*, G.R. No. 207662, April 13, 2016.

[28] *Rollo,* p. 88.

In *Fernandez v. Newfield Staff Solutions, Inc.*,[29] we reiterated our previous ruling in *Salas v. Power & Telephone Supply Phils., Inc.*[30] that this manner of silence constitutes an admission that fortifies the truth of the employee's narration.

It is worth noting that Grasparil was also one of the original complainants in the labor case filed against PHYVITA by PANALIGAN, *et al.*, but later withdrew from the same after entering into a compromise agreement with PHYVITA not unlike Garcia and Kasing. Therefore, we have a situation wherein three similarly situated individuals have divergent and conflicting claims over the important issue of who was the source of the questioned payroll sheets with Grasparil openly admitting the same and Garcia and Kasing pointing to PANALIGAN, *et al.*, based solely on hearsay evidence. At the very least, this circumstance casts doubt upon the evidence so far presented by both parties. With this development, we are compelled to uphold the case for PANALIGAN, *et al.*, since it is settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[31]

Grasparil also stated in his affidavit that aside from monetary consideration, his compromise agreement with the company included a mutual desistance from the cases they filed against each other. PHYVITA allegedly proceeded with the prosecution of the case against those who did not enter into a compromise with it. We quote the relevant portion of Grasparil's affidavit here:

(3) Ukol po sa nasabing kaso sa nasabing ahensiya ng gobyerno [Department of Labor], ako po ay napilitang makipagkasundo sa aming *employer* upang iurong ang aking reklamo laban sa kanila at sa pangakong hindi nila ako idadawit sa kasong isinampa nila sa mga trabahador na nagreklamo laban sa kanila;

---

[29] 713 Phil. 707, 716 (2013), citing *Tegimenta Chemical Phils. v. Oco*, 705 Phil. 57, 64 (2013).

[30] 585 Phil. 513, 524 (2008).

[31] *Continental Micronesia, Inc. v. Basso*, *supra* note 15 at 355.

(4) Sa ganito pong sitwasyon ay binigyan nila ako ng halagang ₱15,000.00 bilang kabayaran sa aking *separation pay* at pag-uurong ng kasong [sic] sa **DEPARTMENT OF LABOR**;

(5) Tinupad naman po nila ang kanilang pangako at hindi nila ako idinawit sa kaso na kanilang isinampa sa aking mga kasama sa trabaho, subalit itinuloy po nila ang kaso laban sa aking mga kasamahang hindi nakipagkasundo o nakipag-ayos sa kanila[.][32]

Taking into consideration the fact that the DOLE-NCR conducted an inspection of the respondent's premises on April 13, 2005 as a result of the labor complaint filed by PANALIGAN, *et al.*, on April 4, 2005[33] and PANALIGAN, *et al.*, were implicated in the alleged January 25, 2005 theft incident only thereafter, a reasonable inference can be made that PANALIGAN, *et al.*'s, termination of employment may have been indeed a retaliatory measure designed to coerce them into withdrawing their complaint for underpayment of wages and nonpayment of other labor standard benefits. Such an act is proscribed by Article 118 of the Labor Code which states:

Art. 118. Retaliatory Measures — It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this title or has testified or is about to testify in such proceedings.

There is no question that PANALIGAN, *et al.*, occupied positions that are reposed with trust and confidence. Jurisprudence states that the job of a roomboy or chambermaid in a hotel is clearly of such a nature as to require a substantial amount of trust and confidence on the part of the employer.[34] There is merit as well in PHYVITA's assertion that the dismissal of its criminal complaint does not necessarily exonerate PANALIGAN, *et al.*, from a charge of loss of trust and

---

[32] *Rollo*, p. 235.

[33] *Id.* at 213-214.

[34] *Manila Midtown Commercial Corp. v. Nuwhrain*, 242 Phil. 681, 686-687 (1988).

confidence. However, even with the lower burden of proof in labor cases, there is a dearth of substantial evidence to support a finding that PANALIGAN, *et al.*, were indeed guilty of a willful breach of their employer's trust. We are constrained to conclude that there is no just and valid cause to terminate the employment of PANALIGAN, *et al.*, for loss of trust and confidence or even for serious misconduct.

Therefore, we uphold the NLRC in finding that PANALIGAN, *et al.*, were illegally dismissed from employment by PHYVITA and, thus, are entitled to separation pay, in lieu of reinstatement, and full backwages. Given the obviously strained relations between the parties and the length of time that PANALIGAN, *et al.*, have been separated from their employment in PHYVITA, we agree with the NLRC that the doctrine of strained relations must apply wherein the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[35]

Finally, we find no reason to disturb the NLRC's ruling regarding the award of salary differentials and unpaid salaries for April 2005 to PANALIGAN, *et al.* The Labor Arbiter and the NLRC both found that PANALIGAN, *et al.*'s, wages were underpaid based on the documents on record; they only differed in the period or the number of months. We agree with the NLRC that PHYVITA should be liable for PANALIGAN, *et al.*'s, claims for underpaid salaries that had not yet prescribed at the time of the filing of the complaint. Moreover, it is settled even in labor cases that "one who pleads payment has the burden of proving it. Even where the plaintiff must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment."[36] In another case, we upheld the NLRC's ruling that the burden of proof rests on the employer to show that it has not committed any violation of labor standard laws, in particular the full payment

---

[35] *TPG Corp. v. Pinas*, G.R. No. 189714 (Resolution), January 25, 2017.

[36] *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil. 620, 632 (1999).

of the legally mandated wages.[37] If PHYVITA had truly paid PANALIGAN, *et al.*, their correct wages, it had every opportunity to produce all relevant payrolls and documents in the proceedings below instead of merely submitting incomplete documents relating to February 2005 salaries, 13th month pay and service incentive leave.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 24, 2011 and the Resolution dated May 29, 2012 of the Court of Appeals in CA-G.R. SP No. 111653 are hereby **REVERSED** and **SET ASIDE**. The Decision dated June 9, 2009 and the Resolution dated September 25, 2009 of the National Labor Relations Commission in NLRC- LAC Case No. 09-002564-07 and NLRC-NCR Case No. 00-11-09431-06 are hereby **REINSTATED**.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Jardeleza,* and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 218242. June 21, 2017]

PAULINO M. ALDABA, *petitioner, vs.* **CAREER PHILIPPINES SHIP-MANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT LTD., and/or VERLOU CARMELINO,** *respondents.*

---

[37] *RTG Construction, Inc. v. Amoguis*, 257 Phil. 923, 929 (1989).

* Per Raffle dated June 19, 2017.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS, ARE ACCORDED MUCH RESPECT BY THIS COURT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN THESE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS; PRESENT.— As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the 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. Whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, however, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC.

2. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; SEAFARER; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC), SECTION 20-B THEREOF; COMPENSATION AND BENEFITS; INJURY OR ILLNESS, CONDITIONS FOR COMPENSABILITY THEREOF.— [I]n situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.

3. ID.; ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; PERIOD OF ENTITLEMENT; RULE ON THE APPLICABILITY OF THE 120-DAY AND 240-DAY PERIODS; GUIDELINES.— This Court, in *Marlow Navigation Philippines, Inc. vs. Osias,* thoroughly discussed the 120-day and 240-day periods, thus: x x x. Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer, and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. x x x. In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, this Court set forth the following guidelines, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. **If the company-designated physician fails to give**

his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

4. ID.; ID.; ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN TO PROVE THAT THE COMPANY-DESIGNATED PHYSICIAN HAS SUFFICIENT JUSTIFICATION TO EXTEND THE PERIOD; THE FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO GIVE HIS ASSESSMENT WITHIN THE PERIOD OF 120 DAYS, WITHOUT JUSTIFIABLE REASON, MAKES THE DISABILITY OF SEAFARER PERMANENT AND TOTAL. — In the present case, the company-designated physician was only able to issue a certification declaring respondent to be entitled to a disability rating of Grade 8 on the 163rd day that petitioner was undergoing continuous medical treatment, which is beyond the period of 120 days, without justifiable reason. It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period. In this case, the respondents failed to do so. Therefore, the company-designated physician, failing to give his assessment within the period of 120 days, without justifiable reason, makes the disability of petitioner permanent and total. As such, the issue as to whether or not the company-designated physician be the sole authority to assess and certify the extent of the injury/sickness for purposes of payment of compensation and disability benefits is now rendered moot.

APPEARANCES OF COUNSEL

Justiniano B. Panambo, Jr. for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated June 4, 2015 of petitioner Paulino M. Aldaba that seeks to reverse and set aside the Decision[1] dated November 19, 2014 of the Court of Appeals (*CA)* in CA-G.R. SP No. 127057 reversing the Decision dated July 16, 2012 and Resolution dated August 31, 2012 of the National Labor Relations Commission (*NLRC*), 2nd Division granting petitioner total and permanent disability benefits in the amount of US$60,000.00.

The facts follow.

Petitioner Paulino M. Aldaba was hired by respondents Career Philippines Shipmanagement Incorporated, and Verlou Carmelino, in behalf of their foreign principal, petitioner Columbia Shipmanagement Ltd., as *Bosun* for work on board the vessel M/V Cape Frio with a basic monthly salary of US$564.00.

In the course of the performance of his duties, on April 4, 2011, petitioner was accidentally hit by twisted chains made of heavy metal causing him to fall and eventually resulted to a back injury.

Thus, on April 7, 2011, when the vessel was at the Port of Hongkong, petitioner was examined at the Quality Health Care Medical Center by Dr. Thomas Wong, with the examination showing that petitioner suffered a fractured back and was declared unfit to work. As such, he was immediately repatriated.

On April 11, 2011, upon his arrival in Manila, petitioner was referred by respondents to the company-designated physician at NGC Medical Specialist, Inc. for treatment and rehabilitation. The x-ray examination on his back showed a "misalignment of

---

[1] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Melchor Quirino C. Sadang and Pedro B. Corales.

distal sacrum that may suggest fracture." In addition, the x-ray examination on his thoracic spine revealed an "anterior wedging deformity, T11 Osteopenia and early degenerative osseus changes."

The company-designated physician, after the continuing evaluation and medical treatment for 163 days, issued a Medical Report dated September 29, 2011 that reads as follows:

1. The patient has reached maximum medical cure.
2. The final disability grading under the POEA schedule of disabilities is Grade 8 – moderate rigidity or two thirds (2/3) loss of Thereafter, (sic) motion or lifting power of the trunk.

Petitioner, on the other hand, consulted Dr. Misael Jonathan A. Ticman, an Orthopedic Surgeon and Diplomate, Philippine Board of Orthopedics, for an independent assessment of his medical condition and came out with findings showing that petitioner's injury resulted to his permanent disability, thus, making him unfit to work as a seafarer in any capacity.

As a result, petitioner demanded for total disability compensation, but respondents did not heed such demand. Respondents, however, expressed willingness to compensate petitioner the amount corresponding to Grade 8 disability rating based on the medical findings of the company-designated physician.

Aggrieved, petitioner filed a complaint for payment of total and permanent disability benefits, as well as medical expenses, with prayer for damages and attorney's fees against respondents with the Arbitration Board of the NLRC.

The Labor Arbiter, on April 27, 2012, decided in favor of respondents in a Decision[2] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to jointly and severally pay complainant Paulino M. Aldaba disability benefits in the amount of US$16,795.00 which

---

[2] CA *rollo*, pp. 67-79.

is equivalent to Grade 8 disability under the POEA Contract, or its peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED.

On appeal, the NLRC, in its Decision[3] dated July 16, 2012 reversed the Decision of the Labor Arbiter and ruled that petitioner is entitled to a permanent total disability compensation, thus:

WHEREFORE, the Decision dated April 27, 2012 of Labor Arbiter Pablo A. Gajardo is hereby reversed. Respondents, jointly and severally, are hereby ordered to pay Complainant-Appellant, by way of permanent and total disability compensation, the amount of US$60,000.00, pursuant to the POEA Standard Contract and to pay attorney's fees of 10% of the total award.

SO ORDERED.

After respondents' motion for reconsideration was denied by the NLRC, they elevated the case to the CA. On November 19, 2014, the CA reversed the Decision of the NLRC and reinstated the Decision of the Labor Arbiter, thus:

WHEREFORE, premises considered, the present Petition for *Certiorari* is **GRANTED**. The assailed Decision dated July 16, 2012 and the Resolution dated August 31, 2012 of the National Labor Relations Commission (NLRC)-2nd Division in LAC NO. 05-000486-12 are hereby **REVERSED** and **SET ASIDE**. The Decision dated April 27, 2012 of the Labor Arbiter in NLRC-NCR-OFW (M) 12-19022-11 is hereby **REINSTATED**.

SO ORDERED.[4]

Hence, the present petition wherein the petitioner assigns the following errors:

The Honorable Court of Appeals committed REVERSIBLE ERROR CONTRARY TO EXISTING JURISPRUDENCE in promulgating the assailed decision and resolution.

---

[3] *Id*. at 50-60.

[4] *Rollo*, p. 41. (Emphasis in the original)

I.
WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS

II.
WHEN IT SOLELY GAVE CREDENCE TO THE CERTIFICATION OF THE COMPANY PHYSICIAN WITHOUT CONSIDERING THE FINDINGS OF PETITIONER'S DOCTOR OF CHOICE.[5]

Petitioner insists that he is entitled to permanent and total disability benefits because of his inability to perform his job for more than 120 days, citing a litany of cases decided by this Court. He further argues that the fact that he had been evaluated by respondents' company physicians is substantial compliance with the provision of the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels" imposed by the Philippine Overseas Employment Administration (*POEA*) and does not preclude him from seeking medical attention to a physician of his own choice, more so, if the purpose of which is to provide an independent medical assessment of his true condition. According to him, the law does not exclusively vest to the company-designated physician the sole authority to assess and certify the extent of the injury/sickness for purposes of payment of compensation and disability benefits. Lastly, petitioner asserts that he is entitled to the award of damages because the act of respondents in failing to pay what is due him shows utter disregard for public policy to protect labor, which is a clear indication of bad faith and attorney's fees as respondents' act has compelled him to incur expenses to protect his interest.

Respondents, on the other hand, in their Comment dated September 3, 2015, contend that the 240-day rule enunciated in *Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*,[6] and subsequent rulings of this Court, should govern, considering that the complaint of petitioner was filed on

---

[5] *Id*. at 10.

[6] 588 Phil. 895 (2008).

December 28, 2011. In the said decision of this Court, it was ruled that a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. They also aver that the failure of petitioner to follow the procedure of submitting conflicting assessments to the opinion of an independent third doctor bars his claim for disability benefits. Finally, they insist that the claim for damages and attorney's fees is bereft of any factual and legal basis as there can be no malice, bad faith or ill-motive that can be imputed against petitioner.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court[7] are reviewable by this Court.[8] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[9] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

---

[7] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. *Filing of petition with Supreme Court.* A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[8] *Philippine Transmarine Carriers, Inc. v. Cristino*, G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

[9] *Id*., citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the 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.[10]

Whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, however, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC. Thus, this Court shall now proceed to resolve the issue raised in the petition for review.

The petition is meritorious.

In *Jebsen Maritime, Inc. v. Ravena*,[11] the Court summarized the applicable provisions that govern a seafarer's disability claim, thus:

---

[10] *Id.* at 127-128, citing *Co v. Vargas*, 676 Phil. 463, 471 (2011).

[11] G.R. No. 200566, September 17, 2014, 735 SCRA 494, 507-510. (Emphasis in the original).

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.[12]

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[13]

Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.

Pertinent to the resolution of this petition's factual issues of compensability (of *ampullary* cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC[14] (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x x x x x x x x x
>
> 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:
>
> x x x x x x x x x
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable

---

[12] *Vergara v. Hammonia Maritime Services, Inc.*, *et al*., *supra* note 6, at 908; *C.F. Sharp Crew Management, Inc., et al. v. Taok*, 691 Phil. 521, 533 (2012); *Jebsen Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag,* 678 Phil. 938, 944 (2011).

[13] *Vergara v. Hammonia Maritime Services, Inc., et al., supra* note 6.

[14] POEA Memorandum Circular No. 09, Series of 2000. Note that per the POEA Memorandum Circular No. 10, Series of 2010, the POEA amended amending for the purpose the 2000 POEA-SEC.

for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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 by the company-designated physician or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall it 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 deemed as 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.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illness not listed in Section 32 of this Contract are disputably presumed as work related.

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

x x x x x x x x x

As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions. (Emphasis supplied)

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[15]

It is beyond dispute that petitioner suffered an illness that is work-related during the term of his employment contract and such is compensable. The issue now is whether or not petitioner is entitled to permanent and total disability benefits because of his inability to perform his job for more than 120 days, which respondents counter as not being the case since the 240-day rule should govern.

---

[15] *Jebsen Maritime, Inc. v. Ravena, supra* note 11, at 511-512.

This Court, in *Marlow Navigation Philippines, Inc. v. Osias,*[16] thoroughly discussed the120-day and 240-day periods, thus:

As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil*,[17] in this wise: "[permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."[18]

The present controversy involves the permanent and total disability claim of a specific type of laborer—a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

ART. 192. Permanent Total Disability.

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for **more than one hundred twenty days**, except as otherwise provided in the Rules; [Emphasis supplied]

The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an

---

[16] G.R. No. 215471, November 23, 2015, 775 SCRA 342, 352-359. (Emphasis ours).

[17] 150-C Phil. 133 (1972).

[18] *Id*. at 139.

injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. [Emphasis and Underscoring Supplied]

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*)[19] whose Section 20 (B) (3) states:

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.** [Emphasis Supplied]

In *Crystal Shipping, Inc. v. Natividad*,[20] *(Crystal Shipping)* the Court ruled that "[permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."[21] Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The *Court in Vergara v. Hammonia Maritime Services, Inc.*[22] *(Vergara)*, however, noted that the doctrine expressed in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied

---

[19] Note that there is already a 2010 POEA-SEC. The present case, however, is still governed by the 2000 POEA-SEC as the employment contract was entered into before 2010.

[20] 510 Phil. 332 (2005).

[21] *Id*. at 340. The respondent therein was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment.

[22] *Supra* note 11, at 912.

in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made <u>because the seafarer requires further medical attention</u>, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. [Emphasis and Underscoring Supplied]

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar (Kestrel).*[23] In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a

---

[23] 702 Phil. 717 (2013).

maximum of 240 days. In *Kestrel,* however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara,* the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.*[24] stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

Then came *Carcedo v. Maine Marine Phils., Inc. (Carcedo).*[25] Although the said case recognized the 240-day rule in Vergara, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law.**" Carcedo further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."[26]

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr,*[27] *(Elburg)*, it was affirmed that the Crystal Shipping doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated — that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

---

[24] G.R. No. 210634, January 14, 2015, 746 SCRA 287.

[25] G.R. No. 203804, April 15, 2015, 755 SCRA 543.

[26] *Id*., citing *Kestrel Shipping Co., Inc. v. Munar*, *supra* note 23, at 810.

[27] G.R. No. 211882, July 29, 2015, 764 SCRA 430.

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.

x x x x x x x x x

Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical

assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: **(1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.**

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[28] this Court set forth the following guidelines, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. **If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period**; and

---

[28] *Supra* note 27, at 453-454. (Emphasis ours)

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

In the present case, the company-designated physician was only able to issue a certification declaring respondent to be entitled to a disability rating of Grade 8 on the 163rd day that petitioner was undergoing continuous medical treatment, which is beyond the period of 120 days, without justifiable reason. It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period. In this case, the respondents failed to do so. Therefore, the company-designated physician, failing to give his assessment within the period of 120 days, without justifiable reason, makes the disability of petitioner permanent and total.

As such, the issue as to whether or not the company-designated physician be the sole authority to assess and certify the extent of the injury/sickness for purposes of payment of compensation and disability benefits is now rendered moot.

This Court, however, does not see the need to award petitioner damages and attorney's fees because petitioner has not given us any proof or valid reason upon which to grant such award.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated June 4, 2015 of petitioner Paulino M. Aldaba is **GRANTED** and the Decision dated November 19, 2014 of the Court of Appeals in CA-G.R. SP No. 127057 is **REVERSED** and **SET ASIDE**. Consequently, the Decision dated July 16, 2012 and Resolution dated August 31, 2012 of the National Labor Relations Commission, 2nd Division, granting petitioner total and permanent disability benefits in the amount of US$60,000.00 is **AFFIRMED** and **REINSTATED,** with the **MODIFICATION** that the award of attorney's fees be omitted.

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

Carpio[*] *(Chairperson), J.,* on wellness leave.

---

[*] Acting Chairperson, per Special Order No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 219070. June 21, 2017]

CONRADO R. ESPIRITU, JR., TERESITA ESPIRITU-GUTIERREZ, MARIETTA R. ESPIRITU-CRUZ, OSCAR R. ESPIRITU, and ALFREDO R. ESPIRITU, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; REGISTRATION OF LAND UNDER SECTION 14(1) OF PD NO. 1529 PROPERTY REGISTRATION DECREE; REQUISITES TO PROSPER.—** Registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, without regard to whether the land was susceptible to private ownership at that time. Thus, for registration under Section 14(1) to prosper, the applicant for original registration of title to land must establish the following: (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicants by themselves and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation thereof; and (3) that the possession is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

2. **ID.; ID.; ID.; APPLICANTS FOR LAND REGISTRATION BEAR THE BURDEN OF PROVING THAT THE LAND APPLIED FOR REGISTRATION IS ALIENABLE AND DISPOSABLE.—** The rule is that applicants for land registration bear the burden of proving that the land applied for registration is alienable and disposable. In this regard, the applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, he must also present a copy of the original classification approved by the DENR Secretary and certified

as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.

3. ID.; ID.; ID.; ID.; TO PROVE THE ALIENABILITY AND DISPOSABILITY OF THE SUBJECT LAND REQUIRES THE PRESENTATION, NOT ONLY OF THE CERTIFICATION FROM THE CENRO/PENRO THAT THE SUBJECT WAS VERIFIED TO BE WITHIN THE ALIENABLE AND DISPOSABLE PART OF THE PUBLIC DOMAIN, BUT ALSO THE SUBMISSION OF A COPY OF THE ORIGINAL CLASSIFICATION APPROVED BY THE DENR SECRETARY AND CERTIFIED AS A TRUE COPY BY THE LEGAL CUSTODIAN OF THE OFFICIAL RECORDS.— During the proceedings before the RTC, to prove the alienable and disposable character of the subject land, the petitioners presented the DENR-NCR certification stating that the subject land was verified to be within the alienable and disposable part of the public domain. This piece of evidence is insufficient to overcome the presumption of State ownership. [T]he present rule requires the presentation, not only of the certification from the CENRO/PENRO, but also the submission of a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.

4. ID.; ID.; ID.; ID.; THE RULE ON SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT MAY BE APPLIED, AT THE DISCRETION OF THE COURTS, ONLY IF THE TRIAL COURT RENDERED ITS DECISION ON THE APPLICATION PRIOR TO JUNE 26, 2008, THE DATE OF THE PROMULGATION OF THE CASE OF REPUBLIC OF THE PHILIPPINES VS. T.A.N. PROPERTIES (578 PHIL. 441). — The petitioners' claim of substantial compliance does not warrant approval of the application. The rule on strict compliance enunciated in *Republic of the Philippines v. T.A.N. Properties (T.A.N. Properties)* remains to be the governing rule in land registration cases. This rule was neither abandoned nor modified by the subsequent pronouncements in *Vega* and *Serrano* as these latter cases were mere *pro hac vice*. In fact, in *Vega*, the Court clarified that the ruling on substantial compliance applies *pro hac vice* and did not, in any way, detract form the Court's ruling in *T.A.N.*

Properties and similar cases which Impose a strict requirement to prove that the land applied for registration is alienable and disposable. x x x. [S]ubstantial compliance may be applied, at the discretion of the courts, only if the trial court rendered its decision on the application prior to June 26, 2008, the date of the promulgation of *T.A.N. Properties*. In this case, the application for registration, which was filed on March 1, 2010, was granted by the RTC only on July 30, 2012, or four (4) years after the promulgation of *T.A.N. Properties*. Evidently, the courts did not have discretion to apply the rule on substantial compliance. Thus, the petitioners' reliance on *Vega* and *Serrano*, as well as on *Sta. Ana Victoria*, which similarly appreciated substantial compliance, is clearly misplaced. Hence, the petitioners failed to prove the first requisite for registration under Section 14(1).

5. ID.; ID.; ID.; ID.; PROOF OF SPECIFIC ACTS OF OWNERSHIP MUST BE PRESENTED TO SUBSTANTIATE THE CLAIM OF OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION AND OCCUPATION OF THE LAND SUBJECT OF THE APPLICATION, AS APPLICANTS FOR LAND REGISTRATION CANNOT JUST OFFER GENERAL STATEMENTS WHICH ARE MERE CONCLUSIONS OF LAW RATHER THAN FACTUAL EVIDENCE OF POSSESSION.— [T]he Court concurs with the appellate court that the petitioners failed to establish that they and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject land on or before June 12, 1945. [T]he petitioners presented several tax declarations in their names, the earliest of which dates back only to 1970. This period of possession and occupation is clearly insufficient to give the petitioners the right to register the subject land in their names because the law requires that possession and occupation under a *bona fide* claim of ownership should be since June 12, 1945 or earlier. x x x. In *Republic of the Philippines v. Remman Enterprises, Inc.*, the Court held that for purposes of land registration under Section 14(1) of P.D. No. 1529, proof of specific acts of ownership must be presented to substantiate the claim of open, continuous, exclusive, and notorious possession and occupation of the land subject of the application. Applicants for land registration cannot just offer general statements which are mere conclusions of law rather

than factual evidence of possession. Actual possession consists in the manifestation of acts of dominion over it of such nature as a party would actually exercise over his own property. In this case, the petitioners failed to sufficiently show that on or before June 12, 1945, they and their predecessors-in-interest actually exercised acts of dominion over the subject land. Their assertion that they could visit the subject land could not be considered an act of dominion which would vest upon them the right to own the subject land. Likewise, their general claim that they could prevent any person from intruding thereto was unsubstantiated by any evidence aside from their allegations.

6. **ID.; ID.; REGISTRATION OF LAND UNDER SECTION 14(2) OF P.D. NO. 1529; REQUISITES TO PROSPER.—** Neither could the subject land be registered under Section 14(2), which reads: (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws. In Heirs of Mario Malabanan v. Republic of the Philippines, the Court explained that when Section 14(2) of P.D. No. 1529 provides that persons "who have acquired ownership over private lands by prescription under the provisions of existing laws," it unmistakably refers to the Civil Code as a valid basis for the registration of lands. For registration under this provision to prosper, the applicant must establish the following requisites: (a) the land is an alienable and disposable, and patrimonial property of the public domain; (b) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (c) the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession.

7. **ID.; ID.; ID.; ID.; THE REGISTRATION OF LAND UNDER SECTION 14(2) OF P.D. NO. 1529 REQUIRES NOT ONLY THE DECLARATION OF ALIENABILITY AND DISPOSABILITY, BUT THERE MUST ALSO BE AN EXPRESS DECLARATION THAT THE PUBLIC DOMINION PROPERTY IS NO LONGER INTENDED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF THE NATIONAL WEALTH OR THAT THE PROPERTY HAS BEEN CONVERTED INTO PATRIMONIAL PROPERTY.—** [T]he Court has ruled that declaration of

alienability and disposability is not enough for the registration of land under Section 14(2) of P.D. No. 1529. There must be an express declaration that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial property. This is only logical because acquisitive prescription could only run against private properties, which include patrimonial properties of the State, but never against public properties. Here, the petitioners failed to present any competent evidence which could show that the subject land had been declared as part of the patrimonial property of the State. The DENR-NCR certification presented by the petitioners only certified that the subject land was not needed for forest purposes. This is insufficient because the law mandates that to be subjected to acquisitive prescription, there must be a declaration by the State that the land applied for is no longer intended for public service or for the development of the national wealth pursuant to Article 422 of the Civil Code. Clearly, the petitioners failed to prove that they acquired the subject land through acquisitive prescription. Thus, the same could not be registered under Section 14(2) of P.D. No. 1529.

APPEARANCES OF COUNSEL

Sunico Malabanan & Rana Law Offices for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the March 20, 2015 Decision[1] and June 18, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 101002, which reversed and set aside the July 30, 2012 Decision[3]

---

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Elihu A. Ybañez and Maria Elisa Sempio Diy, concurring; *rollo,* pp. 34-46.

[2] *Id*. at 48-49.

[3] Penned by Presiding Judge Fortunito L. Madrona; *id*. at 87-95.

of the Regional Trial Court, Branch 274, Parañaque City (*RTC*) in Land Registration Case No. 10-0026 (*LRC No. 10-0026*), which approved the application for land registration filed by the petitioners.

The Antecedents

On March 1, 2010, the petitioners, with their now deceased sibling, Carmen Espiritu, filed before the RTC an Application for Registration of Title to Land[4] covering a parcel of land with an area of 6,971 square meters, located at Barangay La Huerta, Parañaque City, Metro Manila, and identified as Lot 4178, Cad. 299 of the Paranaque Cadastre Case 3 (*subject land*).

Attached to the petitioners' application were copies of the following documents: (1) Special Powers of Attorney respectively executed by petitioners Oscar Espiritu (*Oscar*)[5] and Alfredo Espiritu (*Alfredo*)[6] in favor of petitioner Conrado Espiritu, Jr. (*Conrado, Jr.*), to represent them in the proceedings relating to the application; (2) Advanced Survey Plan[7] of Lot No. 4178, Cad. 299 of the Parañaque Cadastre Case 3; (3) Technical Description[8] of Lot 4178, AP-04-003281, being an advanced survey of Lot 4178, Cad. 299, Parañaque Cadastre Case 3; and (4) Tax Declaration *(T.D.)* No. E-005-01718-TR.[9]

The petitioners alleged that their deceased parents, Conrado Espiritu, Sr. (*Conrado, Sr.*) and Felicidad Rodriguez-Espiritu (*Felicidad*), were the owners of the subject land; that they inherited the subject land after their parents passed away; and that they, by themselves and through their predecessors-in-interest, have been in open, public, and continuous possession of the subject land in the concept of owner for more than thirty (30) years.

---

[4] Records, pp. 3-9.

[5] *Id*. at 12.

[6] *Id*. at 14.

[7] *Id*. at 15.

[8] *Id*. at 17.

[9] *Id*. at 28.

Subsequently, the RTC determined that it had jurisdiction to act on the application. Thereafter, trial ensued, during which Oscar, Conrado, Jr., Ludivina Aromin (*Aromin*), Ferdinand Encarnacion (*Encarnacion*), and Marrieta Espiritu-Cruz (*Marrieta*), were presented as witnesses.

Encarnacion, a staff in the Docket Division of the Land Registration Authority, testified that the notices relative to the application for registration of the subject land were served on the owners of the adjoining lots.

Marrieta testified that she is one of the children of Conrado, Sr. and Felicidad; that she was born on February 23, 1933; that she has known the subject land since she was seven (7) years old because her parents owned the same; that before her parents, her grandparents and Felicidad's parents, Dalmacio Rodriguez and Dominga Catindig were the owners of the subject land; that she, together with her siblings, inherited the subject land from Conrado, Sr. and Felicidad, who died in March 1984 and on January 10, 1986, respectively; that they possessed the subject land openly and continuously since the death of their parents; that the subject land was agricultural in nature because it was being used as salt land during summer and as fishpond during rainy season; and that there were no adverse claimants over the subject land.

Oscar corroborated Marietta's testimony. He reiterated that they were in possession and occupation of the subject land because they could visit the property whenever they wanted to, introduce improvements thereon, and prevent intruders from entering it.

Conrado, Jr. testified that he commissioned the survey of the subject land; that he requested and received from Laureano B. Lingan, Jr., Regional Technical Director of the Forest Management Services (*FMS*), Department of Environment and Natural Resources-National Capital Region (*DENR-NCR*), a Certification,[10] dated October 6, 2010, stating that the subject

[10] *Id*. at 184.

land was part of the alienable and disposable land of the public domain; and that they utilized the subject land in their salt-making business, which they inherited from their parents.

On cross-examination, Conrado, Jr. admitted that their salt-making business ceased operation in 2004, and that the subject land had become idle.

For her part, Aromin, the Chief of the Technical Services of the DENR-NCR, testified that their office issued a certified copy of the technical description of Lot No. 4178 (AP 04-003281) on February 18, 2010; and that the technical description was verified to be consistent with the approved survey plan of Lot No. 4178.

In addition to the testimonies of their witnesses, the petitioners also presented in evidence several tax declarations covering the subject land, the earliest of which was T.D. No. 31802[11] issued on April 28, 1970; a Certification,[12] dated January 26, 2011, issued by the Parañaque City Treasurer's Office stating that the real property tax for the subject land had been fully settled up to year 2010; and the DENR-NCR certification alluded to by Conrado, Jr. during his direct examination, to the effect that the subject land was verified to be within the alienable and disposable land under Project No. 25 of Parañaque City, as per LC Map 2623, and that it is not needed for forest purposes.

The RTC Ruling

In its decision, dated July 30, 2012, the RTC granted the application for registration. The trial court opined that the petitioners were able to establish possession and occupation over the subject land under a *bona fide* claim of ownership since June 12, 1945 or earlier. It gave credence to the testimony of Marrieta that she had known that the subject land belonged to their parents as early as 1940 because she was already seven (7) years old at that time.

---

[11] *Id*. at 173.

[12] *Id*. at 174.

The trial court was convinced that the petitioners were able to prove that the subject land was part of the alienable and disposable land of the public domain. In so ruling, it relied on the contents of the DENR-NCR certification. The dispositive portion of the decision reads:

> WHEREFORE, pursuant to Section 29 of P.D. No. 1529 as amended, judgment is hereby rendered granting the application of the applicants, namely, Carmen R. Espiritu, Conrado R. Espiritu, Jr., Marrieta R. Espiritu, Oscar R. Espiritu, Alfredo R. Espiritu, and Teresita R. Espiritu, confirming the title of said applicants over the parcel of land fully described on its technical description described as follows:
>
> x x x x x x x x x
>
> and ordering the registration of said parcel of land in the name of the applicants.
>
> Once this Decision becomes final, let the corresponding Order for the issuance of the Decree be issued.
>
> SO ORDERED.[13] (Boldface omitted)

The Republic moved for reconsideration, but its motion was denied by the RTC in its resolution, dated April 1, 2013.

Aggrieved, the Republic, through the OSG, elevated an appeal to the CA.[14]

The CA Ruling

In its assailed decision, dated March 20, 2015, the CA reversed and set aside the July 30, 2012 RTC decision. In reversing the trial court, the appellate court reiterated the prevailing doctrine that to successfully register a parcel of land, the application must be accompanied by: (1) a CENRO or PENRO certification stating the alienable and disposable character of the land applied for; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. It opined that the DENR-NCR

---

[13] *Id*. at 271-272.

[14] *Id*. at 306-307.

certification presented by the petitioners would not suffice to prove that the subject land was indeed classified by the DENR Secretary as alienable and disposable. The CA explained that under Department of Agriculture Orders *(DAO)* Nos. 20 and 38, the Regional Technical Director of the FMS had no authority to issue certificates of land classification; and that the petitioners failed to present a certified true copy of the original classification approved by the DENR Secretary. The dispositive portion of the decision states:

> WHEREFORE, in view of the foregoing, the instant appeal is hereby GRANTED. The Decision dated July 30, 2012 of the Regional Trial Court, Branch 274 in Parañaque City in LRC Case No. 10-0026 is hereby ANNULLED and SET ASIDE. The application for registration of land title filed by the applicants-appellees Carmen R. Espiritu, Conrado R. Espiritu, Jr., Marrieta R. Espiritu, Oscar R. Espiritu, Alfredo R. Espiritu and Teresita R. Espiritu is hereby DENIED.
>
> SO ORDERED.[15] (Boldface omitted)

The petitioners moved for reconsideration, but their motion was denied by the CA in its resolution, dated June 18, 2015.

Hence, this petition.

ISSUE

WHETHER THE APPELLATE COURT ERRED IN REVERSING THE TRIAL COURT AND DISMISSING THE PETITIONERS' APPLICATION FOR REGISTRATION OF TITLE.

The petitioners, relying on the cases of *Republic of the Philippines v. Serrano* (*Serrano*)[16] and *Republic v. Vega* (*Vega*),[17] argue that they had substantially complied with the presentation of the required proof that the land applied for registration is

---

[15] *Rollo*, p. 45.

[16] 627 Phil. 350 (2010).

[17] 654 Phil. 511 (2011).

alienable and disposable part of the public domain. They assert that the DENR-NCR certification they submitted, together with all the documentary evidence they presented, constituted substantial compliance with the legal requirement that the land must be proved to be alienable and disposable part of the public domain. The petitioners insist that the DENR-NCR certification they submitted was sufficient proof of the character of the subject land because under DAO No. 2012-09,[18] dated November 14, 2012, the Regional Executive Director of the DENR is vested with authority to issue certifications on land classification for lands situated in Metro Manila.

The petitioners further claimed that they already submitted a certified true copy of the original land classification covering the subject land. They assert that in their Motion for Reconsideration, dated May 3, 2015, filed before the CA, they attached a copy of Forestry Administrative Order *(FAO)* No. 4-1141, dated January 3, 1968, signed by Arturo R. Tanco, Jr., then Secretary of Agriculture and Natural Resources.

In its Comment,[19] the Republic countered that the petitioners failed to comply with the requirements that the application for original registration must be accompanied by (1) a CENRO/ PENRO certification; and (2) a certified true copy of the original classification approved by the DENR Secretary. It contended that the petitioners' reliance on *Serrano* and *Vega* were misplaced, because the rulings therein on substantial compliance were mere *pro hac vice*. The Republic further averred that while the petitioners were able to present a copy of FAO No. 4-1141, the same had no probative value as it was not presented during the proceedings before the RTC. Lastly, it claimed that assuming *arguendo* that the petitioners had sufficiently established the character of the subject land as alienable and disposable, registration would still not be proper, considering that they failed to establish the necessary possession and occupation for the period required by law.

---

[18] CA *rollo*, p. 184.

[19] *Rollo*, pp. 179-188.

In their Reply,[20] dated July 21, 2016, the petitioners insisted on the application of *Serrano* and *Vega* to the present case. They also assert that even if their copy of FAO No. 4-1141 was not presented during the proceedings before the RTC, the same still have probative value. On the basis of *Natividad Sta. Ana Victoria v. Republic of the Philippines* (*Sta. Ana Victoria*),[21] the petitioners claim that in land registration cases, the Court has allowed the presentation of additional certifications to prove the alienability and disposability of the land sought to be registered when the authenticity thereof were not sufficiently contested.

The Court's Ruling

The petition lacks merit.

The Court notes that the subject application was filed under Section 14(2) of Presidential Decree *(P.D.)* No. 1529, considering the allegation therein of possession and occupation in the concept of owner for more than thirty (30) years. The trial court, however, granted the application under Section 14(1) of the same decree after finding that the petitioners were able to establish open, continuous, and exclusive possession and occupation of the subject land under a *bona fide* claim of ownership since June 12, 1945 or earlier.

Manifestly, there has been some uncertainty under what provision of law the present application for registration is being sought because the requirements and basis for registration under these two provisions of law differ from one another. Section 14(1) mandates registration on the basis of possession, while Section 14(2) entitles registration on the basis of prescription.[22] Nevertheless, for the proper resolution of the issues and arguments raised herein, the present application would be

---

[20] *Id.* at 195-204.

[21] 666 Phil. 519 (2011).

[22] *Republic of the Philippines v. Zurbaran Realty and Development Corporation*, 730 Phil. 263, 274 (2014).

scrutinized based on the requirements of the provisions of Sections 14(1) and (2) of P.D. No. 1529.

Registration under Section 14(1) of P.D. No. 1529

Section 14, paragraph 1 of P.D. No. 1529 provides:

> Sec. 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> x x x x x x x x x

Registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, without regard to whether the land was susceptible to private ownership at that time.[23] Thus, for registration under Section 14(1) to prosper, the applicant for original registration of title to land must establish the following: (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicants by themselves and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation thereof; and (3) that the possession is under a *bona fide* claim of ownership since June 12, 1945, or earlier.[24]

Petitioners failed to prove that the subject land is alienable and disposable

---

[23] *Naguit v. Republic of the Philippines*, 489 Phil. 405 (2005).

[24] *Republic of the Philippines v. Estate of Virginia Santos*, G.R. No. 218345, December 7, 2016.

The rule is that applicants for land registration bear the burden of proving that the land applied for registration is alienable and disposable.[25] In this regard, the applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, he must also present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.[26]

In this case, during the proceedings before the RTC, to prove the alienable and disposable character of the subject land, the petitioners presented the DENR-NCR certification stating that the subject land was verified to be within the alienable and disposable part of the public domain. This piece of evidence is insufficient to overcome the presumption of State ownership. As already discussed, the present rule requires the presentation, not only of the certification from the CENRO/PENRO, but also the submission of a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[27]

Likewise, the petitioners' claim of substantial compliance does not warrant approval of the application.

The rule on strict compliance enunciated in *Republic of the Philippines v. T.A.N. Properties (T.A.N. Properties)*[28] remains to be the governing rule in land registration cases. This rule was neither abandoned nor modified by the subsequent pronouncements in *Vega* and *Serrano* as these latter cases were

---

[25] *People of the Philippines v. De Tensuan*, 720 Phil. 326, 339 (2013).

[26] *Republic of the Philippines v. T.A.N. Properties, Inc.*, 578 Phil. 441, 452-453 (2008).

[27] *Id*.

[28] *Id*.

mere *pro hac vice*. In fact, in *Vega*, the Court clarified that the ruling on substantial compliance applies *pro hac vice* and did not, in any way, detract from the Court's ruling in *T.A.N. Properties* and similar cases which impose a strict requirement to prove that the land applied for registration is alienable and disposable.

Further, in *Republic of the Philippines v. San Mateo (San Mateo),*[29] the Court expounded on the reason behind the subsequent decisions which granted applications for land registration on the basis of substantial compliance, *viz.*:

> In Vega, the Court was mindful of the fact that the trial court rendered its decision on November 13, 2003, way before the rule on strict compliance was laid down in T.A.N. Properties on June 26, 2008. Thus, the trial court was merely applying the rule prevailing at the time, which was substantial compliance. Thus, even if the case reached the Supreme Court after the promulgation of T.A.N. Properties, the Court allowed the application of substantial compliance, because there was no opportunity for the registrant to comply with the Court's ruling in T.A.N. Properties, the trial court and the CA already having decided the case prior to the promulgation of T.A.N. Properties.[30] (Italics omitted)

From the foregoing, it is clear that substantial compliance may be applied, at the discretion of the courts, only if the trial court rendered its decision on the application prior to June 26, 2008, the date of the promulgation of *T.A.N. Properties*. In this case, the application for registration, which was filed on March 1, 2010, was granted by the RTC only on July 30, 2012, or four (4) years after the promulgation of *T.A.N. Properties*. Evidently, the courts did not have discretion to apply the rule on substantial compliance. Thus, the petitioners' reliance on *Vega* and *Serrano*, as well as on *Sta. Ana Victoria,* which similarly appreciated substantial compliance, is clearly misplaced. Hence, the petitioners failed to prove the first requisite for registration under Section 14(1).

---

[29] G.R. No. 203560, November 10, 2014, 739 SCRA 445.

[30] *Republic of the Philippines v. San Mateo, supra* at 456-457.

Petitioners failed to prove possession and occupation of the subject land under a bona fide claim of ownership since June 12, 1945 or earlier

As to the second and third requisites, the Court concurs with the appellate court that the petitioners failed to establish that they and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject land on or before June 12, 1945.

In this case, the petitioners presented several tax declarations in their names, the earliest of which dates back only to 1970. This period of possession and occupation is clearly insufficient to give the petitioners the right to register the subject land in their names because the law requires that possession and occupation under a *bona fide* claim of ownership should be since June 12, 1945 or earlier.

In a similar vein, the respective testimonies of petitioners Marietta, Oscar, and Conrado, Jr. were insufficient to support their claim of possession and occupation of the subject land. The only relevant testimonies offered by the petitioners were to the effect that they had known the subject land since they were children, as the same were owned by their parents; that it was used as a fishpond during the rainy season and in their salt-making business during the summer, which business, however, ceased operation in 2004; and that they could visit the subject land whenever they wanted to, introduce improvements on it, and prevent intruders therefrom.

In *Republic of the Philippines v. Remman Enterprises, Inc.*,[31] the Court held that for purposes of land registration under Section 14(1) of P.D. No. 1529, proof of specific acts of ownership must be presented to substantiate the claim of open, continuous, exclusive, and notorious possession and occupation of the land subject of the application. Applicants for land registration cannot just offer general statements which are mere conclusions of

[31] 727 Phil. 608 (2014).

law rather than factual evidence of possession. Actual possession consists in the manifestation of acts of dominion over it of such nature as a party would actually exercise over his own property.[32]

In this case, the petitioners failed to sufficiently show that on or before June 12, 1945, they and their predecessors-in-interest actually exercised acts of dominion over the subject land. Their assertion that they could visit the subject land could not be considered an act of dominion which would vest upon them the right to own the subject land. Likewise, their general claim that they could prevent any person from intruding thereto was unsubstantiated by any evidence aside from their allegations.

Finally, assuming that the use of the land in salt-making and as a fishpond could be considered as a manifestation of acts of dominion, the petitioners still failed to satisfy the requirements of the law for registration of the subject land. Although the petitioners claim that they inherited the salt-making and fishpond businesses from their parents, no mention was made when the aforesaid businesses actually started operation on the subject land. Thus, they failed to demonstrate cultivation or use of the subject land since June 12, 1945 or earlier. Hence, the petitioners failed to establish possession and occupation of the subject land under a *bona fide* claim of ownership within the period required by law.

From the foregoing, the subject land cannot be registered in the name of the petitioners under Section 14(1) of P.D. No. 1529 for their failure to prove its alienable and disposable character, and their possession and occupation from June 12, 1945 or earlier.

Petitioners failed to comply with the requirements under Section 14(2) of P.D. No. 1529

Neither could the subject land be registered under Section 14(2), which reads:

---

[32] *Republic of the Philippines v. Remman Enterprises, Inc., supra* at 625.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

In *Heirs of Mario Malabanan v. Republic of the Philippines*,[33] the Court explained that when Section 14(2) of P.D. No. 1529 provides that persons "who have acquired ownership over private lands by prescription under the provisions of existing laws," it unmistakably refers to the Civil Code as a valid basis for the registration of lands.

For registration under this provision to prosper, the applicant must establish the following requisites: (a) the land is an alienable and disposable, and patrimonial property of the public domain; (b) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (c) the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession.[34]

As regards the first and most important requisite, the Court has ruled that declaration of alienability and disposability is not enough for the registration of land under Section 14(2) of P.D. No. 1529. There must be an express declaration that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial property.[35] This is only logical because acquisitive prescription could only run against private properties, which include patrimonial properties of the State, but never against public properties.

Here, the petitioners failed to present any competent evidence which could show that the subject land had been declared as part of the patrimonial property of the State. The DENR-NCR certification presented by the petitioners only certified that the

---

[33] 605 Phil. 244, 274 (2009).

[34] *Supra* note 22.

[35] *Supra* note 34.

subject land was not needed for forest purposes. This is insufficient because the law mandates that to be subjected to acquisitive prescription, there must be a declaration by the State that the land applied for is no longer intended for public service or for the development of the national wealth pursuant to Article 422 of the Civil Code. Clearly, the petitioners failed to prove that they acquired the subject land through acquisitive prescription. Thus, the same could not be registered under Section 14(2) of P.D. No. 1529.

In fine, the petitioners failed to satisfy all the requisites for registration of title to land under either Sections 14(1) or (2) of P.D. No. 1529. The CA's reversal of the July 30, 2012 RTC decision, and denial of the petitioners' application for original registration of imperfect title over Lot No. 4178 must be affirmed.

WHEREFORE, the petition is **DENIED**. The March 20, 2015 Decision and June 18, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 101002 are **AFFIRMED**. The petitioners' application for original registration of title of Lot No. 4178 in LRC Case No. 10-0026 is **DENIED**, without prejudice.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[*] Per Special Order No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 220718. June 21, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NICOLAS TUBILLO *y* ABELLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); SECTION 266-A (1) THEREOF; RAPE; ELEMENTS; PRESENT.— Under Article 266-A (1) of the RPC, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age. In this case, the CA and the RTC fully appreciated the testimony of HGE that, on February 1, 2006, Tubillo forcibly entered the house where she was sleeping alone; that he took off her clothes and his; that he forcibly inserted his penis in her vagina; and that she could not resist because he poked a knife at her neck. The sexual violation suffered by HGE in Tubillo's hands was corroborated by the medical findings of Dr. Ortiz. The Court is of the view that Tubillo committed rape with force and intimidation against HGE.

2. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; MERE DENIAL, WITHOUT ANY STRONG EVIDENCE TO SUPPORT IT, CAN SCARCELY OVERCOME THE POSITIVE DECLARATION BY THE CHILD-VICTIM OF THE IDENTITY OF THE ACCUSED AND HIS INVOLVEMENT IN THE CRIME ATTRIBUTED TO HIM.— [T]ubillo merely invoked the defense of denial. In addition, he claimed that the complaint was filed because HGE's aunt was angry at him. Mere denial, however, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NO WOMAN, LEAST OF ALL A CHILD, WOULD CONCOCT A STORY OF DEFLORATION, ALLOW 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 BEING.— As to the argument of Tubillo that HGE's testimony was incredible due to her inconsistent claim that she was earlier sexually abused by him, it is simply bereft of merit. As correctly observed by the CA, although HGE claimed that she was abused earlier by Tubillo, she did not report the said incidents because she was scared. It was only after the dastardly deed committed by Tubillo on February 1, 2006 that HGE mustered enough courage to tell her aunt about. Evidently, no woman, least of all a child, would concoct a story of defloration, allow 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 being.

4. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATORY ACT (REPUBLIC ACT NO. 7610); CHILD ABUSE UNDER SECTION 5 (B) THEREOF; ELEMENTS.— [T]he elements of Section 5(b) of R.A. No. 7610, are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It is also stated there that children exploited in prostitution and other sexual abuse are those 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.

5. ID.; ID.; ID.; TERMS "COERCION AND INFLUENCE," DEFINED; AN ACT OF COMMITTING CARNAL KNOWLEDGE AGAINST A CHILD, TWELVE (12) YEARS OLD OR OLDER, MAY CONSTITUTE BOTH RAPE UNDER SECTION 266-A OF THE RPC AND CHILD ABUSE UNDER SECTION 5(B) OF R.A. NO. 7610.— In the recent case of *Quimvel v. People*, the Court ruled that the term "coercion and influence" as appearing in the law is **broad enough** to cover "force and intimidation." Black's Law Dictionary defines coercion as compulsion; force; duress, while undue influence is defined as persuasion carried to the point of overpowering the will. On the other hand, force refers to constraining power, compulsion; strength directed to an end;

while jurisprudence defines intimidation as unlawful coercion; extortion; duress; putting in fear. As can be gleaned, the terms are used almost synonymously. Thus, it is not improbable that an act of committing carnal knowledge against a child, twelve (12) years old or older, constitutes both rape under Section 266-A of the RPC and child abuse under Section 5(b) of R.A. No. 7610.

6. **ID.; REVISED PENAL CODE; RAPE; SECTION 266-A OF THE REVISED PENAL CODE AND SECTION 5 (B) OF REPUBLIC ACT NO. 7610 HARMONIZED; RAPE UNDER SECTION 266-A OF THE REVISED PENAL CODE CANNOT BE COMPLEXED WITH A VIOLATION OF SECTION 5 (B) OF RA 7610, FOR A PERSON CANNOT BE SUBJECTED TWICE TO CRIMINAL LIABILITY FOR A SINGLE CRIMINAL ACT.—** In *People v. Abay*, the Court was faced with the same predicament. In that case, both the elements of Section 266-A of the RPC and Section 5(b) of R.A. No. 7610 were alleged in the information. Nevertheless, these provisions were harmonized, to wit: Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1) (d) of the Revised Penal Code and penalized with *reclusion perpetua*. **On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code.** However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.

7. **ID.; ID.; RAPE THROUGH FORCE OR INTIMIDATION; COMMITTED; PENALTY OF *RECLUSION PERPETUA,* IMPOSED.—** After a judicious study of the records, the Court rules that Tubillo should be convicted of rape under Article 266-A (1) (a) of the RPC. A reading of the information would show that the case at bench involves both the elements of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610. As elucidated in *People v. Abay* and *People v. Pangilinan*,

in such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim. Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A (1) (a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the' house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds. [T]ubillo should be found guilty of rape under Article 266-A (1) (a) of the RPC with a prescribed penalty of *reclusion perpetua*, instead of Section 5 (b) of R.A. No. 7610.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — The Court finds that the damages awarded by the CA and the RTC should be modified. *People v. Jugueta* established the standard of damages to be awarded. Where the penalty imposed is *reclusion perpetua,* the minimum indeminity and damages are as follows: 1. ₱75,000.00 as civil indemnity; 2. ₱75,000.00 as moral damages; and 3. ₱75,0000.00 as exemplary damages.

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

MENDOZA, *J.:*

On appeal is the December 11, 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05740, which affirmed

[1] Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justice Isaias P. Dicdican and Associate Justice Socorro B. Inting, concurring; *rollo,* pp. 3-14.

the July 4, 2012 Decision,[2] of the Regional Trial Court, Branch 225, Quezon City *(RTC)* in Criminal Case No. Q-06-139037, finding accused-appellant Nicolas Tubillo y Abella *(Tubillo)* guilty of the crime of simple rape.

On February 20, 2006, an Information[3] was filed before the RTC charging Tubillo with rape, in relation to Republic Act *(R.A.)* No. 7610, which reads:

> That on or about the 1st day of February 2006, in Quezon City, Philippines, the said accused, by means of force, violence and intimidation and at knife point, commit an act of sexual assault upon one HGE, a minor, 13 years of age, by then and there while complainant was sound asleep alone side the room, forcibly opened the door then accused motivated by sexual desire, undressed her, pulled down her underwear and mounted on top of her, and thereafter have carnal knowledge with said complainant, all against her will and without consent, which act debases, degrades and demeans the intrinsic worth and dignity of said HGE, as a human being, to the damage and prejudice of the said offended party.
>
> CONTRARY TO LAW.[4]

On April 5, 2006, Tubillo was arraigned and he pleaded "not guilty." At the pre-trial stage, the parties stipulated on the identity of Tubillo, the age of HGE, and the police investigation.

During the trial, the prosecution presented HGE and Dr. Paul Ortiz *(Dr. Ortiz)* as its witnesses.

Version of the Prosecution

At the time of the incident, HGE was only thirteen (13) years old and was living with AAA, the person who adopted her, at 249 St. Peter Street, Barangay Holy Spirit, Quezon City.

On February 1, 2006, at around 10:00 o'clock in the evening, HGE was sleeping at home alone, while AAA was working as

---

[2] Penned by Acting Judge Cleto R. Villacorta III; CA *rollo,* pp. 45-53.

[3] Records, p. 1.

[4] *Id*.

a beautician at a salon. Suddenly, she was awakened when Tubillo, her neighbor, entered their house by breaking the padlock of the door.

Upon entry, Tubillo went directly to HGE and then he removed her clothes and his own. He then forcibly inserted his penis in her vagina by pushing his body towards her. HGE felt pain, but she did not resist as Tubillo was poking a knife at her neck. The incident lasted for about thirty (30) seconds.

On February 8, 2006, HGE revealed her ordeal at the hands of Tubillo to her aunt, leading to the filing of the subject complaint.

Dr. Ortiz testified that he was the medico-legal officer who examined HGE. He found that she had a shallow healed laceration at 7:00 o'clock position in the hymen; that the periurethral and vaginal smears were negative for spermatozoa; and, that the findings were suggestive of the use of a blunt force or penetrating trauma to the hymen which could have been an erect penis.

Version of the Defense

The defense presented Tubillo as its sole witness. He denied the accusations against him and claimed that the complaint was filed simply because HGE's aunt was angry at him when he tried to collect some money from her.

The RTC Ruling

In its July 4, 2012 Decision, the RTC found Tubillo guilty beyond reasonable doubt of the crime of simple rape, defined under Article 266-A of the Revised Penal Code *(RPC),* and sentenced him to suffer the penalty of *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest at the rate of six percent (6%) *per annum* reckoned from the finality of the decision.

The RTC found that Tubillo sexually violated HGE on the date and time claimed by the latter. It appreciated HGE's consistent testimony and the medical report presented to establish the carnal knowledge committed against her will. The RTC

disregarded Tubillo's bare defense of denial because it was unsubstantiated.

Aggrieved, Tubillo elevated an appeal before the CA, arguing that HGE's testimony was marred with inconsistencies, because she claimed prior rape incidents which were not proven.

The CA Ruling

In its assailed December 11, 2014 Decision, the CA affirmed Tubillo's conviction with modifications. It was of the view that HGE candidly testified about the sexual violation committed by Tubillo against her and that the inconsistencies in her testimony were trivial.

The CA, however, opined that as HGE was more than twelve (12) years old, Tubillo could be charged with either rape under the RPC or child abuse under R.A. No. 7610. The appellate court concluded that considering that Tubillo was charged with rape in relation to R.A. No. 7610, he should be penalized under Section 5(b), Article III of R.A. No. 7610 instead. Thus, the CA modified the penalty imposed upon Tubillo by reducing it to fourteen (14) years and eight (8) months of *reclusion temporal,* as minimum, to twenty (20) years of *reclusion temporal,* as maximum.

Hence, this appeal.

ISSUE

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,[5] dated December 10, 2015, the Court required the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation and Motion,[6] dated February 16, 2016, the Office of the Solicitor General *(OSG)* stated that it was no

---

[5] *Rollo,* pp. 21-22.

[6] *Id*. at 23-26.

longer filing any supplemental brief as it was adopting its Brief for the Appellee previously filed on November 5, 2013 before the CA.

In their Manifestation in lieu of Supplemental Brief,[7] dated March 2, 2016, the Public Attorney's Office manifested that they would not any more file a supplemental brief, considering that Tubillo had exhaustively discussed the assigned error in the Appellant's Brief before the CA.

The Court's Ruling

The appeal lacks merit.

Rape through force or intimidation was committed

Under Article 266-A (1) of the RPC, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.[8]

In this case, the CA and the RTC fully appreciated the testimony of HGE that, on February 1, 2006, Tubillo forcibly entered the house where she was sleeping alone; that he took off her clothes and his; that he forcibly inserted his penis in her vagina; and that she could not resist because he poked a knife at her neck. The sexual violation suffered by HGE in Tubillo's hands was corroborated by the medical findings of Dr. Ortiz.

On the other hand, Tubillo merely invoked the defense of denial. In addition, he claimed that the complaint was filed because HGE's aunt was angry at him. Mere denial, however, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.[9]

---

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

[8] *People v. Court of Appeals,* G.R. No. 183652, February 25, 2015.

[9] *People v. Amaro*, G.R. No. 199100, July 18, 2014, 730 SCRA 190, 199.

As to the argument of Tubillo that HGE's testimony was incredible due to her inconsistent claim that she was earlier sexually abused by him, it is simply bereft of merit. As correctly observed by the CA, although HGE claimed that she was abused earlier by Tubillo, she did not report the said incidents because she was scared. It was only after the dastardly deed committed by Tubillo on February 1, 2006 that HGE mustered enough courage to tell her aunt about.

Evidently, no woman, least of all a child, would concoct a story of defloration, allow 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 being.[10]

Hence, the Court is of the view that Tubillo committed rape with force and intimidation against HGE.

Proper crime committed and imposable penalty

The CA found that Tubillo committed the crime of rape against HGE, then a 13-year-old minor. Nevertheless, it opined that he must be convicted under Section 5(b) of R.A. No. 7610 because it was the crime alleged in the information.

The Court disagrees.

To reiterate, the elements of rape under Section 266-A of the RPC are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.[11]

On the other hand, the elements of Section 5(b) of R.A. No. 7610, are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child

---

[10] *People v. Pareja,* G.R. No. 202122, January 15, 2014, 714 SCRA 131, 162.

[11] *People v. Padigos,* 700 Phil. 368 (2012).

exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It is also stated there that children exploited in prostitution and other sexual abuse are those 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.

In the recent case of *Quimvel v. People*,[12] the Court ruled that the term "coercion and influence" as appearing in the law is **broad enough** to cover "force and intimidation." Black's Law Dictionary defines coercion as compulsion; force; duress, while undue influence is defined as persuasion carried to the point of overpowering the will. On the other hand, force refers to constraining power, compulsion; strength directed to an end; while jurisprudence defines intimidation as unlawful coercion; extortion; duress; putting in fear. As can be gleaned, the terms are used almost synonymously.[13] Thus, it is not improbable that an act of committing carnal knowledge against a child, twelve (12) years old or older, constitutes both rape under Section 266-A of the RPC and child abuse under Section 5(b) of R.A. No. 7610.

In *People v. Abay,*[14] the Court was faced with the same predicament. In that case, both the elements of Section 266-A of the RPC and Section 5(b) of R.A. No. 7610 were alleged in the information. Nevertheless, these provisions were harmonized, to wit:

> Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1) (d) of the Revised Penal Code and penalized with *reclusion perpetua*. **On the other hand, if the victim is 12 years or older, the offender should be charged with either**

---

[12] G.R. No. 214497, April 18, 2017.

[13] *Id*.

[14] 599 Phil. 390 (2009).

sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.[15] (Emphasis supplied)

In *Abay*, the offended party was thirteen (13) years old at the time of the rape incident. Again, the information therein contained all the elements of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610. Nevertheless, the Court observed that the prosecution's evidence only focused on the specific fact that accused therein sexually violated the offended party through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, accused therein was convicted of the crime of rape under Article 266-A (1) of the RPC. Notably, the prosecution did not tackle the broader scope of "influence or coercion" under Section 5(b) of R.A. No. 7610.

Similarly, in *People v. Pangilinan,*[16] the Court was faced with the same dilemma because all the elements of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610 were present. It was ruled therein that the accused can be charged with either rape or child abuse and be convicted therefor. The Court observed, however, that the prosecution's evidence proved that accused had carnal knowledge with the victim through force and intimidation by threatening her with a samurai sword. Thus, rape was established.[17] Again, the evidence in that case did not refer to the broader scope of "influence or coercion" under Section 5(b) of R.A. No. 7610.

---

[15] *Id*. at 396.

[16] 676 Phil. 16-38 (2011).

[17] *People v. Pangilinan, supra* at 36.

In the present case, the RTC convicted Tubillo for the crime of rape because the prosecution proved that there was carnal knowledge against HGE by means of force or intimidation, particularly, with a bladed weapon.[18] On the other hand, the CA convicted Tubillo with violation of Section 5(b) of R.A. No. 7610 because the charge of rape under the information was in relation to R.A. No. 7610.[19]

After a judicious study of the records, the Court rules that Tubillo should be convicted of rape under Article 266-A (1) (a) of the RPC.

A reading of the information would show that the case at bench involves both the elements of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610. As elucidated in *People v. Abay* and *People v. Pangilinan,* in such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim.

Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A (1) (a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds.

In fine, Tubillo should be found guilty of rape under Article 266-A (1) (a) of the RPC with a prescribed penalty of *reclusion perpetua*, instead of Section 5 (b) of R.A. No. 7610.

---

[18] CA *rollo,* p. 49.

[19] *Rollo*, p. 13.

Awards of damages

The Court finds that the damages awarded by the CA and the RTC should be modified. *People v. Jugueta*[20] established the standard of damages to be awarded. Where the penalty imposed is *reclusion perpetua,* the minimum indemnity and damages are as follows:

1. ₱75,000.00 as civil indemnity;
2. ₱75,000.00 as moral damages; and
3. ₱75,000.00 as exemplary damages.

WHEREFORE, the July 4, 2012 Decision of the Regional Trial Court, Branch 225, Quezon City, in Criminal Case No. Q-06-139037, is **AFFIRMED** with the following **MODIFICATIONS**:

WHEREFORE, finding Nicolas Tubillo *y* Abella guilty beyond reasonable doubt of one (1) count of **SIMPLE RAPE,** the Court hereby sentences him to suffer the penalty of *reclusion perpetua*; and to pay HGE the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All the amounts of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

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

[*] Per Special Order No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 222538. June 21, 2017]

EDUARDO N. RIGUER, *petitioner, vs.* **ATTY. EDRALIN S. MATEO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF JUDGMENTS, FINAL ORDERS OR RESOLUTIONS; SERVICE BY REGISTERED MAIL SHALL BE MADE BY DEPOSITING THE COPY IN THE POST OFFICE IN A SEALED ENVELOPE ADDRESSED TO THE PARTY OR HIS COUNSEL AT HIS OFFICE, IF KNOWN, OTHERWISE AT HIS RESIDENCE, IF KNOWN; APPLICATION IN CASE AT BAR.— Under Section 9, Rule 13 of the Rules of Court, service of judgments, final orders or resolutions may be served either personally or by registered mail. In relation thereto, service by registered mail shall be made by depositing the copy in the post office in a sealed envelope addressed to the party or his counsel at his office, if known, otherwise at his residence, if known. The CA was correct in reckoning the 15-day period to file a motion for reconsideration from May 15, 2015, when Macaldo received a copy of the decision, and not May 18, 2015, when Riguer's former counsel was allegedly informed by his mother about the decision. Thus, the motion for reconsideration was filed out of time as it was done only on June 2, 2015. As pointed out by the CA, the Philippine Postal Corporation certified that a copy of the April 13, 2015 decision was received by Riguer's counsel through Macaldo.

2. ID.; ID.; PROCEDURAL RULES MAY BE DISREGARDED BY THE COURT TO SERVE THE ENDS OF SUBSTANTIAL JUSTICE; CASE AT BAR.— The procedural lapses, notwithstanding, the Court may still entertain the present appeal. Procedural rules may be disregarded by the Court to serve the ends of substantial justice. x x x The merits of Riguer's petition for review warrant a relaxation of the rules of procedure if only to attain justice swiftly. As would be further discussed, a denial of his petition would only allow Atty. Mateo to collect unconscionable attorney's fees.

3. CIVIL LAW; CONTRACTS; ABSENT SUFFICIENT PROOF OF FRAUD, THE CONTRACT BINDS THE PARTIES AND IS THE LAW BETWEEN THEM.— In nullifying contracts on the basis of fraud, the same must be established by clear and convincing evidence. x x x Other than Riguer's allegation of fraud, no clear and convincing evidence was presented to support a conclusion that Atty. Mateo employed it in preparing, and eventually having Riguer sign, the *Kasunduan*. Absent sufficient proof of fraud, the contract binds the parties and is the law between them.

4. LEGAL ETHICS; ATTORNEY'S FEES; WHETHER THERE IS AN AGREEMENT OR NOT AS TO THE ATTORNEY'S FEES, THE COURT CAN FIX A REASONABLE COMPENSATION WHICH LAWYERS MAY RECEIVE FOR THEIR PROFESSIONAL SERVICES.— Section 24, Rule 138 of the Rules of Court provides: Sec. 24. *Compensation of attorneys; agreement as to fees.* — An attorney shall be entitled to have and **recover from his client no more than a reasonable compensation for his services**, with a view to the importance of the subject-matter of the controversy, the extent of the services rendered, and professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation but may disregard such testimony and base its conclusion on its professional knowledge. **A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable**. Accordingly, whether there is an agreement or not, the courts can fix a reasonable compensation which lawyers may receive for their professional services. As an officer of the court, the lawyer submits himself to the authority of the court and, as such, the power to determine the reasonableness or unconscionable character of attorney's fees stipulated by the parties is a matter falling within the regulatory prerogative of the courts. In *Rayos v. Atty. Hernandez*, the Court wrote that the stipulated attorney's fees could be reduced if the same were unconscionable based on established standards, x x x Lest it be misunderstood, the Court does not wish to deprive Atty. Mateo of his just compensation for the satisfactory legal service he had rendered to his client. Though his right to his lawyer's fees is recognized, the same must not amount to a deprivation of property of his client. As Riguer's property was sold for only ₱600,000.00, and not ₱3million, the agreed attorney's fees of ₱250,000.00 must be reduced accordingly.

5. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; NOTARIZED DOCUMENT IS PROOF OF THE CONTENTS STATED THEREIN AND MAY BE SET ASIDE ONLY BY CLEAR AND STRONG EVIDENCE TO THE CONTRARY; CASE AT BAR.— The deed of sale in question was notarized. The act of notarizing made the instrument a public document carrying with it legal ramifications. In *Dela Peña v. Avila*, the Court explained that a notarized document is proof of the contents stated therein and may be set aside only by clear and strong evidence to the contrary, x x x In the case at bench, other than his bare assertions, Atty. Mateo never presented proof to support his claim that the consideration indicated in the deed of sale was spurious. Absent any proof to the contrary, the contents of the notarized deed of sale should be held valid and true.

APPEARANCES OF COUNSEL

Fajardo Law Office for petitioner.

Barioga Castillo Chua Cabiedes Santos Dela Cruz Del Fonso Matias for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the April 13, 2015 Decision[1] and the September 3, 2015[2] and January 14, 2016[3] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 136297, which upheld the June 2, 2014 Decision[4] of the Regional Trial Court, Branch 28, Cabanatuan City *(RTC)*. The RTC affirmed the July 26, 2013

---

[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justice Celia C. Librea-Leagogo and Associate Justice Melchor Q.C. Sadang, concurring; *rollo*, pp. 32-43.

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

[3] *Id*. at 54.

[4] Penned by Presiding Judge Trese D. Wenceslao; *id*. at 68-78.

Decision[5] of the Municipal Trial Court in Cities, Cabanatuan City *(MTCC)*, in a case involving attorney's fees.

The Antecedents

Sometime in 2002, petitioner Eduardo N. Riguer *(Riguer)* engaged the services of respondent Atty. Edralin S. Mateo *(Atty. Mateo)* to represent him in civil and criminal cases involving a parcel of land covered by Transfer Certificate of Title *(TCT)* No. 12112. They agreed that the compensation for Atty. Mateo's legal services would be the acceptance fee, appearance fee, and pleading fees, which Riguer religiously paid.[6]

On January 16, 2007, the RTC rendered a judgment favorable to Riguer in the civil case. During the pendency of the appeal, Atty. Mateo was able to make him sign a document entitled "*Kasunduan*."[7] The said document stated that Riguer agreed to pay Atty. Mateo the following: a) ₱30,000.00 as reimbursement for the latter's expenses in the civil case; b) ₱50,000.00 in case of a favorable decision in the civil case; and c) ₱250,000.00 once the land covered by TCT No. 12112 was sold.[8]

On May 21, 2009, the appeal was decided in favor of Riguer, prompting Atty. Mateo to demand payment of the fees agreed upon in the *Kasunduan*. Riguer refused to pay.

After two (2) years or on May 30, 2011, Atty. Mateo filed a Complaint for Collection of Attorney's Fees with Urgent Prayer for Issuance of Preliminary Attachment before the MTCC.

The MTCC Ruling

In its July 26, 2013 decision, the MTCC ruled in favor of Atty. Mateo and ordered Riguer to pay him ₱250,000.00 with six percent (6%) interest as attorney's fees and ₱5,494.50 as

---

[5] Penned by Presiding Judge Kelly B. Belino; *id*. at 61-67.

[6] *Id*. at 11.

[7] *Id*.

[8] *Id*. at 12.

costs of suit. It opined that the *Kasunduan* bound Riguer as he never denied signing the same. The MTCC disregarded his claim that he was unaware that he had signed the said document as it was lumped with other documents to be signed for the appeal. It found that at the time the *Kasunduan* was executed, no appeal had yet been made as the trial court had not yet rendered a decision in the civil case. In addition, it imposed legal interest at the rate of six percent (6%) *per annum* pursuant to Article 2209 of the Civil Code. The MTCC disposed the case in this wise:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Atty. Edralin S. Mateo as against the defendant Eduardo N. Riguer as follows:
>
> 1. Ordering the defendant Eduardo Riguer to pay the plaintiff the amount of TWO HUNDRED FIFTY THOUSAND PESOS (Php250,000.00) with 6% legal interest commencing from the date of judicial demand or the filing of this case on May 30, 2011, until the finality of this Decision. The total amount due inclusive of interest shall further earn 6% interest until the whole obligation has been paid; and
>
> 2. Ordering the defendant Eduardo Riguer to pay the plaintiff the cost of this suit in the amount of FIVE THOUSAND FOUR HUNDRED NINETY-FOUR PESOS AND FIFTY CENTAVOS (Php5,494.50).
>
> SO ORDERED.[9]

Aggrieved, Riguer appealed to the RTC.

The RTC Ruling

In its June 2, 2014 Decision, the RTC concurred with the MTCC. It held that the *Kasunduan* bound Riguer and that the latter's claim that the said document was inserted in the voluminous documents he signed for the appeal was mere speculation. Further, the RTC ruled that the attorney's fees in the amount of ₱250,000.00 were just and equitable on the basis of *quantum meruit*. Likewise, it held that Atty. Mateo could

---

[9] *Id*. at 66.

rightfully recover the costs of suit as he was constrained to litigate to enforce his claim for attorney's fees. The RTC decreed:

> WHEREFORE, premises considered, let the above-entitled appealed case be DISMISSED with prejudice for lack of merit. The decision in Civil Case No. 19388 dated July 26, 2013 rendered by the MTCC – Branch 1, Cabanatuan City is hereby affirmed *in toto*.
>
> SO ORDERED.[10]

Undeterred, Riguer appealed before the CA.

The CA Ruling

In its April 13, 2015 Decision, the CA sustained the RTC decision. The appellate court disagreed that Atty. Mateo merely inserted the *Kasunduan* in the voluminous documents of the appealed civil case as the document was signed a month before the trial court had rendered its decision. Hence, there was no appeal to speak of yet. Further, the CA added that even if the *Kasunduan* was void, Atty. Mateo was still entitled to attorney's fees on the basis of *quantum meruit*. It noted that Riguer's claim that the ₱250,000.00 was grossly disproportionate to the selling price of the land in the amount of ₱600,000.00 was only presented for the first time on appeal. Thus, the CA ruled:

> ACCORDINGLY, this petition is DENIED and the Decision dated June 2, 2014, AFFIRMED.
>
> SO ORDERED.[11]

Riguer moved for reconsideration, but his motion was denied by the CA in its September 3, 2015 Resolution for being filed out of time. He filed another motion for reconsideration, but it was again denied by the CA in its January 14, 2016 Resolution as a second motion for reconsideration was prohibited pursuant to Section 2, Rule 52 of the Rules of Court.

Hence, this petition.

---

[10] *Id*. at 78.

[11] *Id*. at 42.

ISSUES

I

WHETHER RIGUER'S MOTION FOR RECONSIDERATION FOR THE APRIL 13, 2015 CA DECISION WAS TIMELY FILED.

II

WHETHER ATTY. MATEO IS ENTITLED TO RECOVER ₱250,000.00 IN ATTORNEY'S FEES PURSUANT TO THE *KASUNDUAN*.

Riguer insists that the CA erred in ruling that the first motion for reconsideration was filed out of time. He faults the CA in reckoning the 15-day period to file a motion for reconsideration from May 15, 2015, or the date his former counsel allegedly received the notice of the April 13, 2015 decision. Riguer explained that the notice was received by a certain Marisol Macaldo *(Macaldo)*. He asserts that Macaldo never worked for the law firm which previously represented him because she was a former helper of the father of one of the lawyers in the said law firm. Thus, Riguer concludes that the service of the notice was defective as it was never served at the office of his counsel but at the latter's family home. Likewise, he dismisses the CA's ruling that his motion for reconsideration of the September 3, 2015 resolution was a second motion for reconsideration because it raised a different issue.

Further, Riguer stresses that he was misled in signing the *Kasunduan* as it was included in the voluminous documents for appeal. He asserts that Atty. Mateo took advantage of his lack of education and advanced age in making him sign it. Riguer points out that he paid the ₱30,000.00 and ₱50,000.00 embodied in the *Kasunduan* as Atty. Mateo verbally required him to do so. He insists that the said document belied the true intent of the parties and that the ₱250,000.00 attorney's fees was unreasonable.

In his Comment,[12] dated July 29, 2016, Atty. Mateo countered that the CA correctly denied Riguer's first motion for

---

[12] *Id*. at 139-146.

reconsideration because the explanation of his counsel was unjustified. He claimed that the certification of the Postmaster proved that the decision was properly served on Riguer's counsel at the address indicated in the records.

Moreover, Atty. Mateo asserted that even if technicalities were to be brushed aside, the petition still failed to impress because the same raised questions of fact, which were beyond the ambit of a petition for review under Rule 45. Likewise, he stated that the courts *a quo* were right in awarding the attorney's fees because they were in accordance with the written contract assented to by Riguer. Atty. Mateo claimed that the ₱250,000.00 attorney's fees was appropriate, considering that Riguer's property was valued at around ₱3million at the time the contract was executed. He pointed out that Riguer could not rely on the deed of sale as basis to reduce the award because the same was fictitious, elaborating that it was common not to indicate the accurate price of the property sold to lessen the tax to be levied from the sale.

In his Reply,[13] dated November 14, 2016, Riguer reiterated that it had been sufficiently established that the person who received the CA decision was never authorized by his counsel to do so. He asserted that Atty. Mateo's claim that the property was valued at ₱3 million was unsubstantiated. Riguer persisted that the price indicated in the notarized deed of sale was controlling as it was a public document.

The Court's Ruling

The petition is partially meritorious.

Under Section 9, Rule 13 of the Rules of Court, service of judgments, final orders or resolutions may be served either personally or by registered mail. In relation thereto, service by registered mail shall be made by depositing the copy in the post office in a sealed envelope addressed to the party or his counsel at his office, if known, otherwise at his residence, if known.[14]

---

[13] *Id.* at 151-160.

[14] Section 7, Rule 13 of the Rules of Court.

The CA was correct in reckoning the 15-day period to file a motion for reconsideration from May 15, 2015, when Macaldo received a copy of the decision, and not May 18, 2015, when Riguer's former counsel was allegedly informed by his mother about the decision. Thus, the motion for reconsideration was filed out of time as it was done only on June 2, 2015. As pointed out by the CA, the Philippine Postal Corporation certified that a copy of the April 13, 2015 decision was received by Riguer's counsel through Macaldo.

Rules of procedure relaxed in the interest of substantial justice

The procedural lapses, notwithstanding, the Court may still entertain the present appeal. Procedural rules may be disregarded by the Court to serve the ends of substantial justice. Thus, in *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*,[15] the Court elucidated:

> Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.
>
> x x x x x x x x x
>
> Ergo, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.[16]

The merits of Riguer's petition for review warrant a relaxation of the rules of procedure if only to attain justice swiftly. As

---

[15] 700 Phil. 575 (2012).

[16] *Id.* at 581-582.

would be further discussed, a denial of his petition would only allow Atty. Mateo to collect unconscionable attorney's fees.

Fraud must be clearly and convincingly proved before a contract may be nullified

The Court agrees that Riguer failed to establish that he was deceived and misled by Atty. Mateo in signing the *Kasunduan*. Though Atty. Mateo judicially admitted that he prepared the said document during the pendency of the appeal,[17] it was insufficient to prove that he employed fraud and deceit in making Riguer sign the said document together with other documents for the appeal.

In nullifying contracts on the basis of fraud, the same must be established by clear and convincing evidence. The Court, in *Tankeh v. DBP*,[18] wrote:

> Second, the standard of proof required is clear and convincing evidence. This standard of proof is derived from American common law. It is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases). The degree of believability is higher than that of an ordinary civil case. Civil cases only require a preponderance of evidence to meet the required burden of proof. **However, when fraud is alleged in an ordinary civil case involving contractual relations, an entirely different standard of proof needs to be satisfied. The imputation of fraud in a civil case requires the presentation of clear and convincing evidence. Mere allegations will not suffice to sustain the existence of fraud.** The burden of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud *must* be clearly and convincingly shown.[19] [Emphases supplied]

Other than Riguer's allegation of fraud, no clear and convincing evidence was presented to support a conclusion that

---

[17] *Rollo*, pp. 21-23.

[18] 720 Phil. 641 (2013).

[19] *Id.* at 675-676.

Atty. Mateo employed it in preparing, and eventually having Riguer sign, the *Kasunduan.* Absent sufficient proof of fraud, the contract binds the parties and is the law between them.

Stipulated attorney's fees may be reduced if found to be unconscionable

The Court, nevertheless, reduces the agreed attorney's fees for being unconscionable. Section 24, Rule 138 of the Rules of Court provides:

> Sec. 24. *Compensation of attorneys; agreement as to fees.* — An attorney shall be entitled to have and **recover from his client no more than a reasonable compensation for his services**, with a view to the importance of the subject-matter of the controversy, the extent of the services rendered, and professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation but may disregard such testimony and base its conclusion on its professional knowledge. **A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable**. [Emphases supplied]

Accordingly, whether there is an agreement or not, the courts can fix a reasonable compensation which lawyers may receive for their professional services.[20] As an officer of the court, the lawyer submits himself to the authority of the court and, as such, the power to determine the reasonableness or unconscionable character of attorney's fees stipulated by the parties is a matter falling within the regulatory prerogative of the courts.[21]

In *Rayos v. Atty. Hernandez*,[22] the Court wrote that the stipulated attorney's fees could be reduced if the same were unconscionable based on established standards, to wit:

---

[20] *Rilloraza, Africa, de Ocampo and Africa v. Eastern Telecommunications Phils., Inc.*, 369 Phil. 1, 11. (1999).

[21] *Radiowealth Finance Co., Inc., et al. v. International Corporate Bank*, 261 Phil. 1022, 1029 (1990).

[22] 544 Phil. 447 (2007).

Stipulated attorney's fees are unconscionable whenever the amount is by far so disproportionate compared to the value of the services rendered as to amount to fraud perpetrated upon the client. This means to say that the amount of the fee contracted for, standing alone and unexplained would be sufficient to show that an unfair advantage had been taken of the client, or that a legal fraud had been perpetrated on him.

The decree of unconscionability or unreasonableness of a stipulated amount in a contingent fee contract, will not, however, preclude recovery. It merely justifies the fixing by the court of a reasonable compensation for the lawyer's services.

Generally, the amount of attorney's fees due is that stipulated in the retainer agreement which is conclusive as to the amount of the lawyer's compensation. **A stipulation on a lawyer's compensation in a written contract for professional services ordinarily controls the amount of fees that the contracting lawyer may be allowed, unless the court finds such stipulated amount unreasonable or unconscionable**. x x x x

We have identified the circumstances to be considered in determining the reasonableness of a claim for attorney's fees as follows: **(1) the amount and character of the service rendered; (2) labor, time, and trouble involved**; (3) the nature and importance of the litigation or business in which the services were rendered; (4) the responsibility imposed; **(5) the amount of money or the value of the property affected by the controversy or involved in the employment**; (6) the skill and experience called for in the performance of the services; (7) the professional character and social standing of the attorney; (8) the results secured; (9) whether the fee is absolute or contingent, it being recognized that an attorney may properly charge a much larger fee when it is contingent than when it is not; and **(10) the financial capacity and economic status of the client have to be taken into account in fixing the reasonableness of the fee.**[23] [Emphases supplied]

Applying the aforementioned standards, no other conclusion can be reached other than that the ₱250,000.00 attorney's fees was unconscionable. *First*, the attorney's fees amounted to almost 50% of the value of the property litigated as it was only sold

---

[23] *Id.* at 462-463.

for ₱600,000.00. *Second*, Riguer was a farmer of advanced age with limited educational attainment. *Third*, the stipulated attorney's fees in the *Kasunduan* referred to Atty. Mateo's services for the appeal because the legal fees during the proceedings in the trial court had already been paid. *Lastly*, Atty. Mateo judicially admitted that he believed he was entitled to 10% attorney's fees. It was stated in the *Kasunduan* that Atty. Mateo was to be paid ₱250,000.00 because he claimed that the litigated property had a fair market value of around ₱3 million. The same, however, was sold for only ₱600,000.00.

To convince the Court that the ₱250,000.00 attorney's fees was conscionable, Atty. Mateo pointed out that the the deed of sale did not accurately reflect the value of the land sold because its consideration was only for ₱600,000.00. He insisted that the true value of the property was around ₱3 million.

The deed of sale in question was notarized. The act of notarizing made the instrument a public document carrying with it legal ramifications. In *Dela Peña v. Avila*,[24] the Court explained that a notarized document is proof of the contents stated therein and may be set aside only by clear and strong evidence to the contrary, to wit:

> With the material contradictions in the Dela Peña's evidence, the CA cannot be faulted for upholding the validity of the impugned 4 November 1997 Deed of Absolute Sale. Having been duly notarized, said deed is a public document which carries the evidentiary weight conferred upon it with respect to its due execution. **Regarded as evidence of the facts therein expressed in a clear, unequivocal manner, public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. <u>The burden of proof to overcome said presumptions lies with the party contesting the notarial document</u> like the Dela Peñas who, unfortunately, failed to discharge said onus.** Absent clear and convincing evidence to contradict the same, we find that the CA correctly pronounced the Deed of Absolute Sale was valid and binding between Antonia and Gemma.[25] [Emphasis and underscoring supplied]

---

[24] 681 Phil. 553 (2012).

[25] *Id*. at 567.

In the case at bench, other than his bare assertions, Atty. Mateo never presented proof to support his claim that the consideration indicated in the deed of sale was spurious. Absent any proof to the contrary, the contents of the notarized deed of sale should be held valid and true. Further, Riguer pointed out that the property was located in a remote location, which made it less valuable compared to properties located in the center of the city.

Lest it be misunderstood, the Court does not wish to deprive Atty. Mateo of his just compensation for the satisfactory legal service he had rendered to his client. Though his right to his lawyer's fees is recognized, the same must not amount to a deprivation of property of his client. As Riguer's property was sold for only ₱600,000.00, and not ₱3 million, the agreed attorney's fees of ₱250,000.00 must be reduced accordingly.

WHEREFORE, the April 13, 2015 Decision and the September 3, 2015 and January 14, 2016 Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 136297 are **AFFIRMED with MODIFICATION**. The attorney's fees in the amount of ₱250,000.00 awarded to respondent Atty. Edralin S. Mateo is reduced to ₱100,000.00.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[*] Per Special Order No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 222685. June 21, 2017]

LORETA SAMBALILO, SALVADOR SAMBALILO, ZOILO SAMBALILO, JR. and RENANTE SAMBALILO, *petitioners, vs.* **SPOUSES PABLO LLARENAS and FE LLARENAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* AS A RULE ONLY ERRORS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; EXCEPTION.—** Considering that the CA and the RTC arrived at different factual findings and conclusions, the Court is constrained to depart from the general rule that only errors of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, and to review the evidence presented.

2. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; ELEMENTS.—** For a forcible entry case to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy, or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property. The only purpose of a forcible entry suit is to protect the person who had prior physical possession against another who unlawfully entered the property and usurped possession. Hence, in this case, it is imperative that respondents establish that the improvements introduced by petitioners dispossessed them of the land they owned.

3. **ID.; EVIDENCE; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; DECLARATION AGAINST INTEREST; A DECLARATION BEFORE THE CITY ASSESSOR'S OFFICE ON THE EXTENT OF THE AREA ACTUALLY OCCUPIED AS THE BASIS FOR THE ISSUANCE OF THE CORRESPONDING TAX**

DECLARATION OF THE PROPERTY IS AN ADMISSION AGAINST INTEREST; RATIONALE.— As correctly pointed out by the RTC, respondents' declaration before the City Assessor's Office on the extent of the area they actually occupied, as the basis for the issuance of the corresponding tax declaration of the property, was an admission against their interest. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not. The RTC was also correct when it held that the tax declaration enjoys the presumption of regularity, and must be respected, unless rebutted by contrary evidence which, in this case, respondents miserably failed to adduce.

4. **ID.; ID.; BURDEN OF PROOF; THE BURDEN OF PROOF RESTS UPON THE PARTY WHO ASSERTS AND NOT UPON HE WHO DENIES, BECAUSE BY THE NATURE OF THINGS, THE ONE WHO DENIES A FACT CANNOT PRODUCE ANY PROOF OF IT.—** Basic is the rule in evidence that the burden of proof rests upon the party who asserts, not upon him who denies, because, by the nature of things, the one who denies a fact cannot produce any proof of it. In this case, the burden to prove that they were in prior physical possession of the property and that they were deprived of possession thereof by force and/or stealth lies with respondents. The Court holds that respondents failed to carry out this burden because, as already stated, even their own evidence belied their assertions.

APPEARANCES OF COUNSEL

Maricar R. Lucero for petitioners.
Eduardo P. Tibo for respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 30, 2014

Decision[1] and the December 4, 2015 Resolution[2] of the Court of Appeals, Cebu City *(CA)* in CA-G.R. SP No. 05120, which reversed the May 6, 2010 Decision[3] of the Regional Trial Court, Branch 32, Calbayog City *(RTC)*. The RTC overruled the January 12, 2009 Decision[4] of the Municipal Trial Court in Cities, Calbayog City *(MTCC)* in a special civil action for forcible entry.

The Antecedents

This case originated from a complaint for forcible entry, with prayer for the issuance of a temporary restraining order and preliminary injunction, filed by Spouses Pablo Llarenas and Fe Llarenas (*Sps. Llarenas*) against Loreta Sambalilo and her children, Salvador, Zoilo, Jr., and Renante *(the Sambalilos)*, before the MTCC, docketed as Civil Case No. 1506.

Sps. Llarenas, in their complaint, alleged that they were the owners of a parcel of land with an area of 120 square meters, located in Barrio Matobato, Calbayog City, having acquired it by purchase under a deed of sale, dated April 17, 1972, from Zoilo Sambalilo *(Zoilo)*, late husband of petitioner Loreta Sambalilo *(Loreta),* with the following adjoining boundaries: on the north – by the remaining portion of Zoilo; east — by the land of Ricardo Delgado; south – by the seashore; and west — by the remaining portion of Zoilo. Subsequently, or on November 23, 1981, Sps. Llarenas acquired another parcel of land, by purchase from the same vendor, consisting of 176 square meters, bounded as follows: on the north — by the provincial road; east — by the land of Conrado Ignacio and Jurado Sarmiento; south — by the seashore; and west by the land of Tiburcio Chan. Immediately thereafter, they occupied and took possession of the said properties by introducing improvements, such as

---

[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justice Gabriel T. Ingles and Associate Justice Ma. Luisa Quijano-Padilla, concurring; *rollo* (Vol. I), pp. 89-104.

[2] *Id*. at 46-48.

[3] Penned by Presiding Judge Romeo Dizon Tagra; *id*. at 195-206.

[4] Penned by Presiding Judge Filemon A. Tandinco, Jr.; *id*. at 270-284.

the construction of a septic tank, a piggery building, a house rented to Spouses Cabuenas, the house of their caretaker, a steel gate, a fence made of coco lumber, and another house where they allowed their daughter to stay. On August 20, 2004, under the pretext of inspecting their septic tank, the petitioners suddenly entered their property, forcibly removed the steel gate from its concrete mounting and, with the assistance of several helpers, began constructing a concrete fence within the premises of their property.

In their answer, the Sambalilos contended that Loreta was, and had always been, in possession of the property where the concrete fence and framework of a future house had been erected because that area was within the portion of their land, left unsold, and where her residential house had been standing.[5]

During the hearing on the application for injunction, Sps. Llarenas presented a sketch plan depicting the location of the properties described in the complaint and various pictures showing the constructed structures erected by the Sambalilos. On September 22, 2005, the MTCC issued a writ of preliminary injunction enjoining the Sambalilos and their successors-in-interest from entering the disputed premises and to refrain from continuing with their construction or to desist from introducing any improvement pending the final resolution of the main action.[6]

Thereafter, the parties submitted their respective position papers. Sps. Llarenas attached the tax declarations of their properties and those of the adjoining owners. The Sambalilos, on the other hand, appended several documents like the sketch plan of Lot 2692 of the Calbayog Cadastre, prepared by Geodetic Engineer Joel S. Ungab; the joint affidavit of *Barangay* Captain Sisenio Santiago *(Brgy. Capt. Santiago)*, and *Barangay* Kagawad Manuel Caber, Jr. *(Brgy. Kag. Caber)*; Minutes of the conciliation proceeding conducted by the Office of the *Barangay* Captain of Matobato, Calbayog City; and the affidavit of Primitiva Ignacio

---

[5] *Id*. at 196.

[6] *Id*.

(*Primitiva*), daughter of the late Bonifacio Ignacio (*Bonifacio*), the owner of Lot 2692-E, among others.[7]

In their position paper,[8] the Sambalilos alleged that Loreta was the widow of the late Zoilo; and Salvador, Zoilo, Jr. and Renante were the children of Zoilo and Loreta; that Zoilo and Loreta owned a parcel of residential lot with an area of 640 square meters, more or less, designated in the survey as Lot No. 2692, CAD 422, located along Maharlika Highway in Barangay Matobato, Calbayog City; that during his lifetime, Zoilo, together with Loreta, sold portions of Lot 2692 to various persons; that among the buyers were Tiburcio Chan, Bonifacio, and Sps. Llarenas, who were able to buy two separate portions; that as a result of the sales, Lot 2692 was subsequently subdivided into eight (8) parcels of land, from Lot 2692-A to Lot 2692-H; that the portion bought by Bonifacio was designated as Lot 2692-E, while the portions purchased by Sps. Llarenas were designated as Lot 2692-C and Lot 2692-F, respectively; and that the remaining portion still owned by the Sambalilos was designated as Lot 2692-G.

They also claimed that they had allowed a pathway to be constructed within Lot 2692 from the Maharlika Highway to the seashore (or the Samar Sea) which was used by the people as ingress and egress to the sea from Maharlika Highway and vice-versa; that Loreta used the pathway to access her residential house constructed in Lot 2692-G; that a conciliation proceedings involving Loreta and Pablo Llanares was conducted before the barangay officials of Brgy. Matobato, Calbayog City, headed by Brgy. Capt. Santiago because of the complaint of Loreta against Pablo who put up a gate shutter in a steel gate constructed across the pathway, which obstructed passage from the Maharlika Highway to the seashore and also towards the house of Loreta; that during the said conciliation proceedings, Loreta and Pablo agreed, among others, that (1) the lots would be relocated by a geodetic engineer with the expenses equally shared by the

---

[7] *Id*. at 196-197.

[8] *Id*. at 285-294.

parties; and (2) the barangay officials would remove the gate shutter. Eventually, the said gate shutter was removed with the help of barangay officials and in the presence of Pablo.

It was further averred that Lot 2692-C and Lot 2692-F of Pablo were distinct, separate and different from Lot 2692-G owned by the Sambalilos; that Sps. Llarenas never stayed or occupied these lots because they actually resided in their house along Umbria Street, Brgy. Balud, Calbayog City, as alleged in their complaint; and that it was only Loreta who had a residential house in Lot 2692-G where she had been living openly up to the present time.

The Ruling of the MTCC

In its January 12, 2009 Decision, the MTCC ruled in favor of Sps. Llarenas. It explained that Sps. Llarenas were able to prove prior physical possession of the contested property and that the Sambalilos were guilty of forcible entry by removing the steel gate and constructing concrete fences on the said property. The MTCC explained that the improvements disturbed Sps. Llarenas' possession of their adjoining properties near the seashore. It did not give credence to the conciliation proceedings because the same were conducted after the commission of the forcible entry. The MTCC disposed the case as follows:

> WHEREFORE, this Court finds preponderant evidence for the plaintiffs and renders judgment as follows: a) Making permanent the preliminary injunction; b) Ordering the defendants to demolish and remove at their expense all structures they made or cause to be made inside the premises of plaintiffs' property covered by their Exh. "A" and Exh. "B;" c) Ordering the defendants, jointly and severally, to pay plaintiffs ₱35,000.00 for their attorney's acceptance fee, plus ₱3,000.00 for the latter's appearance fee for three hearings; d) Ordering the defendants, jointly and severally, to pay the plaintiffs ₱50,000.00 for moral damages; and e) Ordering the defendants, jointly and severally, to pay the costs of this suit.
>
> SO ORDERED.[9]

---

[9] *Id*. at 284.

Aggrieved, the Sambalilos appealed to the RTC.

The Ruling of the RTC

In its May 6, 2010 Decision, the RTC *reversed* the MTCC decision. It pointed out that based on the respective sketch plans of the parties, there was a consensus that the alleged illegal structures were located on the western side of the pathway when facing the seashore. The RTC noted that based on the evidence on record, it was shown that the concrete fences, built as improvements, were made on Lot 2692-G, where Loreta's house was located, and not on Lot 2692-C. It stated that the area actually occupied by Sps. Llarenas after the sale at the western side of the pathway (Lot 2692-C) did not actually reach the side of the seashore where the structures in question stood because Lot 2692-H and Lot 2692-G, under the name of the Sambalilos, existed in between. The RTC wrote that this was in consonance with the boundaries stated in the tax declaration for Lot 2692-C and supported by the witnesses of the Sambalilos.

The RTC belied Sps. Llarenas' claim that the Sambalilos forcibly removed the steel gate along the pathway because based on the minutes of the mediation conference at the barangay level, the steel gate was removed pursuant to the voluntary agreement of the parties. The dispositive portion of the decision reads:

> WHEREFORE, the appealed decision dated January 12, 2009 is hereby reversed and set aside, and the Injunction issued therein is likewise hereby dissolved and lifted.
>
> SO ORDERED.[10]

Undeterred, Sps. Llarenas appealed before the CA.

The Ruling of the CA

In its assailed January 30, 2014 Decision, the CA *overruled* the RTC decision and *reinstated* the MTCC decision. It held that Sps. Llarenas were able to establish that they were in prior

---

[10] *Id*. at 206.

physical possession of Cadastral Lot 2692-F. Moreover, the CA gave more credence to their photographs which showed that the steel gate was removed and a concrete fence was constructed. Further, even if it was agreed that the steel gate was to be removed, the CA said that there was no excuse for the Sambalilos to erect the said concrete fences within the premises possessed by Sps. Llarenas. It disposed the case as follows:

> **WHEREFORE,** the petition for review is **GRANTED.** The May 6, 2010 Decision of the RTC, Branch 32, Calbayog City in Special Civil Action No. 117 is **REVERSED and SET ASIDE**. The January 12, 2009 Decision of the MTCC, Calbayog City in Special Civil Action No. 1506 is **REINSTATED** with **MODIFICATIONS** that the awards for moral damages, attorney's acceptance fee, appearance fee and costs of the suit are **DELETED**.
>
> **SO ORDERED**.[11]

The Sambalilos moved for reconsideration, but the CA denied their motion in its assailed December 4, 2015 Resolution.

Hence, this petition.

GROUNDS

1. **THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE CONTROVERSY AROSE IN LOT 2692-F, WHICH IS DECLARED IN THE NAME OF THE RESPONDENTS, ALTHOUGH THE EVIDENCE AT HAND, AS CORRECTLY FOUND BY THE RTC BRANCH 32, WOULD INDUBITABLY POINT THAT THE IMPROVEMENTS MADE BY PETITIONERS WERE ON THEIR OWN LOT WHICH IS LOT 2692-G.**
2. **THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT HELD THAT PETITIONERS HAVE NO PRIOR PHYSICAL POSSESSION ON THE LOT WHERE THE IMPROVEMENTS WERE MADE.**

---

[11] *Id*. at 104.

3. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT THE STEEL GATE OF RESPONDENTS WERE FORCIBLY REMOVED BY PETITIONERS THUS DISREGARDING THE EVIDENCE AT HAND WHICH POINTED TO RESPONDENT HAVING VOLUNTARILY AGREED FOR ITS REMOVAL BY THE BARANGAY AUTHORITIES.[12]

The Sambalilos agree that only questions of law are allowed in the present action. The petition, however, falls within the exception considering that the findings of the CA are contrary to those of the RTC and contradicted by the evidence on record, and that its judgment is based on misapprehension of facts.

Moreover, petitioners insist that the concrete fences they built were introduced within the premises of Lot 2692-G, which they owned. Thus, there can be no forcibly entry. The respondents Sps. Llarenas *(respondents)* possessed Lot 2692-F, and not the lot where they built the structures which was Lot 2692-G. Further, petitioners claim that the steel gate was removed because of the agreement of the parties during the conciliation proceedings before the barangay.

On June 23, 2016, respondents filed their Comment.[13] They asserted that they were able to establish, by preponderance of evidence, the identities of the two parcels of land they bought from Zoilo and his wife Loreta measuring 120 and 176 square meters (*sq.m.*), respectively. The testimonies of respondents and their witnesses clearly and preponderantly established their prior physical possession of the same parcels of land up to, and until, August 20, 2004 when petitioners forcibly entered the said land. Respondents argued that forcible entry was committed not only with the use of force, but also by means of strategy and/or stealth, because, petitioners had convinced respondents' daughter to let them in on the pretext of just inspecting the land and the septic tank. Respondents asserted

---

[12] *Id*. at 17 & 31.

[13] *Id*. at 485-523.

that this conclusion of fact by the MTCC could not be overturned by the RTC.

On October 3, 2016, petitioners filed their Reply[14] stressing that they never contested that respondents bought two (2) parcels of land from Zoilo, their predecessor, and that they were in prior possession of these two (2) parcels, Lot 2692-C and Lot 2692-F. What was being contested, according to them, was the actual area where these two (2) lots were located. Petitioners insisted that, as correctly found by the RTC, the area which respondents had improved by August 20, 2004, the alleged date of forcible entry, was their lot, Lot 2692-6, and not the portions bought by respondents.

The issue for the Court's resolution is whether the improvements, specifically the concrete fence and the framework of a future house, introduced by the petitioners disturbed respondents' possession of the land in question.

The Court's Ruling

The Court finds merit in the petition.

Considering that the CA and the RTC arrived at different factual findings and conclusions, the Court is constrained to depart from the general rule that only errors of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, and to review the evidence presented.[15]

For a forcible entry case to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy, or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.[16] The only purpose of a forcible

---

[14] *Rollo* (Vol. II), pp. 786-807.

[15] *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, 623 Phil. 424, 433 (2009).

[16] *Mangaser v. Ugay*, G.R. No. 204926, December 3, 2014, 744 SCRA 13, 23-24, citing *DeLa Cruz v. Court of Appeals*, 539 Phil. 158, 170 (2006).

entry suit is to protect the person who had prior physical possession against another who unlawfully entered the property and usurped possession.[17] Hence, in this case, it is imperative that respondents establish that the improvements introduced by petitioners dispossessed them of the land they owned.

It is undisputed that petitioners had constructed a concrete fence and a framework of a future house, the very structures complained of, as the direct result of the alleged illegal intrusion of petitioners on the disputed lots.

In this case, it was shown that the structures were introduced on the lot west of the pathway when facing the seashore. The Court agrees with the RTC that the evidence on record show that the said lot was Lot 2692-G, which was under the name of petitioners, and not Lot 2692-F as found by the CA. Neither were the constructions made on Lot 2692-C owned by respondents. As correctly found by the RTC:

> Now then, considering the common consensus of the parties, as culled from their respective sketch plans, that the alleged illegal structures were **located on the western side of the pathway**, if one is facing against the Samar Sea, and that **this area is adjacent to the seashore,** on the southern side, **the task of determining who is actually in prior physical possession of this area becomes relatively easier**.
>
> As shown in the appellants' sketch plan, the lot on the western side of the pathway and adjacent to the seashore, if one is facing against the Samar Sea, is Lot 2692-G/Lot 2692-H. Unfortunately for the appellees, Lot 2692-G and Lot 2692-H are the properties of the appellants as shown in their Tax Declaration No. 99 01016 00929 (Appellees' Exhibit "V"), and Tax Declaration No. 99 01016 00928 (Appellees' Exhibit "T").
>
> Appellees' property (Lot 2692-F) declared under Tax Declaration No. 99 01016 00478 (Appellees' Exhibit "S") while bounded by the seashore on its southern side could not have been the area where the illegal structure is located because as shown on the sketch plan of

---

[17] *Apostolic Vicar of Tabuk, Inc. v. Spouses Sison*, G.R. No. 191132, January 27, 2016.

the appellants, it is located along the Eastern side of the pathway, not on the Western side where the disputed property is situated.

As regards the appellees' other property, (Lot 2692-C) per Tax Declaration No. 99 01016 00406 (Appellees' Exhibit "R"), which is located at the western side of the pathway, if one is facing against the Samar Sea, the location of the contested structures could not have also been inside this property because as shown in the same sketch plan, its southern side is not bounded by the seashore but by Lot 2692-G/Lot 2692-H, which, to repeat, are properties declared in the name of the appellants.

Consequently, from the foregoing presentation and analysis, it is clear that the contested structures are located within the area of Lot 2692-H (Appellees' Exhibit "T") and Lot 2692-G (Appellees' Exhibit "V"), both of which belong to the appellants.[18]

The RTC was correct in giving more credence to the sketch plan of petitioners. Although respondents' sketch plan,[19] relied upon by the MTCC and the CA, showed the area containing the constructions as located on the western side of what appeared to be a pathway, when facing the seashore, this pathway which divided the two parcels of land, the 176 and 117 sq. m. lots, traversed from the northern side up to only the edge of the 117 sq. m. lot. The said sketch plan, as properly argued by petitioners, was relatively limited as it did not depict the adjoining properties after the subdivision of the entire Lot 2692 into various sub-lots. Indeed, the sketch plan was insufficient because it did not even identify the exact location of the properties, Lot 2692-C and Lot 2692-F, actually possessed by respondents based on their own tax declarations.

Quite the contrary, the sketch plan of petitioners[20] showed an existing pathway (Lot 2692-I) that traversed the entire Lot 2692 from its northern side along the Maharlika Highway, all the way up to the seashore of the Samar Sea to the northern

---

[18] *Rollo* (Vol. I), p. 201.

[19] *Id*. at 480.

[20] *Id*. at 295.

side. This sketch plan was consistent with the statement made by the *barangay* officials in their joint-affidavit[21] that there was a pathway along the said lot used by the people in going to and from the highway to the seashore.

This Court cannot subscribe to respondents' claim that the disputed structures were erected on their property as their two lots were adjoining each other as shown in their sketch plan. A perusal of both the deeds of absolute sale[22] as well as the tax declarations[23] pertaining to the two parcels of land, however, shows that the two portions were *not adjacent* to each other. Thus, the theory of respondents that it was through their lot with 120 sq. m. (Lot-C) that their lot with 176 sq. m. (Lot-F) was entered by petitioners on August 20, 2004 deserves scant consideration.

The Court, thus, shares the view of petitioners that their sketch plan was more credible than that of respondents inasmuch as the former was consistent with the boundaries of the parcels of land as depicted in respondents' own documentary evidence.[24]

Having established that the improvements made by petitioners were in Lots 2692-G and H, the next issue to address is whether petitioners were in actual physical possession of these lots.

The MTCC found that respondents were in physical possession of the contested area by virtue of the instruments of sale that transferred the property to them. It may be true that the deeds of conveyances covering respondents' acquisition of the 120 and 176 sq. m. lots from Zoilo have the seashore as their common boundaries. It bears to emphasize that petitioners disputed the correctness of the area sold to respondents although they admitted the sale. Indeed, petitioners vehemently denied the seashore as the south boundary of Lot 2692-C, and contended that the

---

[21] *Id*. at 296.

[22] *Id*. at 335-336.

[23] *Id*. at 601-612.

[24] *Rollo* (Vol. II), pp. 795-796.

deed of sale for the said land contained erroneous boundaries. The MTCC, however, overlooked the fact that after the sale, the area occupied by respondents at the western side of the pathway, Lot 2692-C, did not actually reach the side of the seashore where the structures stood because, as aptly noted by the RTC, Lot 2692-H and Lot 2692-G, in the name of petitioners, existed in between. Records show that Tax Declaration No. 99 01016 00406,[25] indicated that the adjoining boundary on the south towards the direction of Samar Sea were Lots 2692-H and Lot 2692-G, and not the seashore.

This finding is further confirmed by the sketch plan of petitioners showing that the extent of the property occupied by respondents on the western side of the pathway (Lot 2692-C) was only up to the property of petitioners (Lots 2692-H and 2692-G), and did not reach the seashore.

The flimsy excuse of respondents that the boundaries on the tax declarations for the two parcels, Lots 2692-C and 2692-F, were altered by the Office of the City Assessor of Calbayog City, explaining why the two parcels were not adjoining each other, fails to persuade. For one, if indeed the boundaries were altered, they should have filed an action or protest before the City Assessor's Office to have them corrected from the time they discovered the same. Unfortunately, they did not. The same is true with respect to Tax Declaration No. 99 01016 00406[26] for Lot 2692-C. When the said lot was transferred in their names, the declaration contained an area of 120 sq. m. with the boundaries indicated in the south as 05-103 (2692 H) 102 (2692 G), and not the seashore. Their acquiescence for the longest time indicated their conformity to the said declaration of boundaries. As correctly pointed out by the RTC, respondents' declaration before the City Assessor's Office on the extent of the area they actually occupied, as the basis for the issuance of the corresponding tax declaration of the property, was an admission against their interest. The rationale for the rule is

---

[25] *Rollo* (Vol. I), p. 600.

[26] *Id*. at 308.

based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.[27]

The RTC was also correct when it held that the tax declaration enjoys the presumption of regularity, and must be respected, unless rebutted by contrary evidence which, in this case, respondents miserably failed to adduce.

Even assuming that the tax declarations were not reliable as to the true and correct boundaries of the two parcels of land, the deeds of sale of the said properties which were even marked as exhibits for respondents, also *failed to show that the two lots were adjacent to each other.*

Further, petitioners' stance that they had a house in Lot 2692-G where they had been living until the present and that the improvements had been made thereon was bolstered by the affidavit[28] of their neighbor Primitiva and the joint affidavit[29] of *Brgy.* Capt. Santiago and *Brgy.* Kag. Caber. Primitiva affirmed that her house was adjacent to respondents' house and across was the house of Loreta in Lot 2692-G. Further, they stated that respondents placed a steel gate, at the corner of the house of Bonifacio and the lot of Pablo, along the pathway obstructing the general public in going to the seashore from the highway or vice-versa, and which caused Loreta to complain before the barangay. Primitiva and the barangay officials narrated that during the proceedings before the barangay, Loreta and Pablo agreed that the steel gate should be removed and that the same was done in their presence and in the presence of petitioners and Pablo.

Thus, respondents' claim of actual physical possession of the questioned land has no leg to stand. It must be noted that

---

[27] *Manila Electric Company v. Heirs of Spouses Deloy*, 710 Phil. 427, 441 (2013), citing *Heirs of Bernardo Ulep v. Ducat*, 597 Phil. 5, 16 (2009), citing *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

[28] *Rollo* (Vol. I), p. 301.

[29] *Id*. at 296.

aside from their self-serving assertions, respondents did not adduce evidence of their actual possession of the disputed area. Interestingly, respondents made reference to people who allegedly occupied their Lots 2692-C and 2692-F, Mr. and Mrs. Cabuenos, Marisa Cabuenos, Rolando Pua and the like, but surprisingly none of them executed corroborative affidavits to support their position. Obviously, it was only their daughter, Marie Effie L. Becerrel, whom they were able to present as their witness. On the contrary, their own documentary exhibits belie their claim that they physically possessed that portion of the lot where the improvements were made.

After having proven that the improvements were made on Lot 2692-G, the testimonies of respondents as to their physical possession of Lots 2692-C and 2692-F become irrelevant. The CA, therefore, erred in affirming the MTCC finding that petitioners had no prior physical possession on the lot where the improvements were made.

Anent the issue of forcible entry, to repeat, the only witness presented by respondents to show that petitioners were guilty of committing forcible entry was their daughter. Her claim of stealthy intrusion of petitioners over their land by forcibly removing the steel gate, as aptly concluded by the RTC, was debunked by the Minutes[30] of conciliation meeting before the Office of the Barangay of Matobato, Calbayog City, and the joint affidavit of the Barangay Captain and Kagawad of the place. The barangay officials stated that the steel gate along the pathway was dismantled and removed by them, upon voluntary agreement of the parties, and not by petitioners alone as falsely claimed by respondents.

On this point, the Court agrees with petitioners' view that their witnesses were more credible, being impartial with no proven ill motive to testify against respondents, than respondents' lone witness, their daughter who, as expected, had all the reasons to testify in their favor.

---

[30] *Id*. at 299-300.

Basic is the rule in evidence that the burden of proof rests upon the party who asserts, not upon him who denies, because, by the nature of things, the one who denies a fact cannot produce any proof of it.[31] In this case, the burden to prove that they were in prior physical possession of the property and that they were deprived of possession thereof by force and/or stealth lies with respondents. The Court holds that respondents failed to carry out this burden because, as already stated, even their own evidence belied their assertions.

In view of the foregoing, the Court finds sufficient justification to reverse the assailed CA decision.

On a final note, the Court cautions that the ruling in this case is limited only to the issue of possession *de facto* or material possession. This adjudication is not a final determination on the issue of ownership and, thus, without prejudice to any party's right to file action on the matter of ownership.

WHEREFORE, the petition is **GRANTED**. The January 30, 2014 Decision and the December 4, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 05120 are hereby **REVERSED** and **SET ASIDE**. The May 6, 2010 Decision of the Regional Trial Court, Branch 32, Calbayog City, is **REINSTATED**.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[31] *C.I.C.M. Mission Seminaries School of Theology, Inc. v. Perez*, G.R. No. 220506, January 18, 2017, citing *Acabal v. Acabal*, 494 Phil. 528, 541 (2005).

[*] Per Special Order No. 2445 dated June 16, 2017.

SECOND DIVISION

[G.R. No. 224099. June 21, 2017]

ROMMEL M. ZAMBRANO, ROMEO O. CALIPAY, JESUS L. CHIN, LYNDON B. APOSAGA, BONIFACIO A. CASTAÑEDA, ROSEMARIE P. FALCUNIT, ROMEO A. FINALLA, LUISITO G. GELLIDO, JOSE ALLI L. MABUHAY, VICENTE A. MORALES, RAUL L. REANZARES, DIODITO I. TACUD, ERNAN D. TERCERO, LARRY V. MUTIA, ROMEO A. GURON, DIOSDADO S. AZUSANO, BENEDICTO D. GIDAYAWAN, LOWIS M. LANDRITO, NARCISO R. ASI, TEODULO BORAC, SANTOS J. CRUZADO, JR., ROLANDO DELA CRUZ, RAYMUNDO, MILA Y. ABLAY, ERMITY F. GABUCAY, PABLITO M. LACANARIA, MELCHOR PEÑAFLOR, ARSENIO B. PICART III, ROMEO M. SISON, JOSE VELASCO JR., ERWIN M. VICTORIA, PRISCO J. ABILO, WILFREDO D. ARANDIA, ALEXANDER Y. HILADO, JAIME M. CORALES, GERALDINE C. MAUHAY, MAURO P. MARQUEZ, JONATHAN T. BARQUIN, RICARDO M. CALDERON JR., RENATO R. RAMIREZ, VIVIAN P. VIRTUDES, DOMINGO P. COSTANTINO JR., RENATO A. MANAIG, RAFAEL D. CARILLO, *petitioners, vs.* **PHILIPPINE CARPET MANUFACTURING CORPORATION/ PACIFIC CARPET MANUFACTURING CORPORATION, DAVID E. T. LIM, and EVELYN LIM FORBES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; CLOSURE OR CESSATION OF BUSINESS OPERATION, AS A VALID CAUSE; ELUCIDATED.— Under Article 298 (formerly Article 283) of the Labor Code, closure or cessation of operation of the establishment is an authorized cause for

terminating an employee, x x x Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment, aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. In such a case, the employer is generally required to give separation benefits to its employees, unless the closure is due to serious business losses.

2. **ID.; ID.; UNFAIR LABOR PRACTICES OF EMPLOYERS; AN EMPLOYER MAY ONLY BE HELD LIABLE FOR UNFAIR LABOR PRACTICE IF IT CAN BE SHOWN THAT HIS ACTS AFFECT IN WHATEVER MANNER THE RIGHT OF HIS EMPLOYEES TO SELF-ORGANIZE.—** Article 259 (formerly Article 248) of the Labor Code enumerates the unfair labor practices of employers, x x x Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.

3. **ID.; ID.; ID.; IN THE CASE OF UNFAIR LABOR PRACTICE, THE ALLEGING PARTY HAS THE BURDEN OF PROVING THE EXISTENCE THEREOF; CASE AT BAR.—** The general principle is that one who makes an allegation has the burden of proving it. Although there are exceptions to this general rule, in the case of unfair labor practice, the alleging party has the burden of proving it. x x x Moreover, good faith is presumed and he who alleges bad faith has the duty to prove the same. The petitioners miserably failed to discharge the duty imposed upon them. They did not identify the acts of Phil Carpet which, they claimed, constituted unfair labor practice. They did not even point out the specific provisions which Phil Carpet violated. Thus, they would have the Court pronounce that Phil Carpet committed unfair labor practice on the ground that they were dismissed from employment simply because they were union officers and members. The constitutional commitment to the policy of social justice, however, cannot be understood

to mean that every labor dispute shall automatically be decided in favor of labor. In this case, as far as the pieces of evidence offered by the petitioners are concerned, there is no showing that the closure of the company was an attempt at union-busting. Hence, the charge that Phil Carpet is guilty of unfair labor practice must fail for lack of merit.

4. **MERCANTILE LAW; CORPORATION CODE; CORPORATION, DEFINED.—** A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.

5. **ID.; ID.; ID.; DOCTRINE OF PIERCING THE CORPORATE VEIL; FOR REASONS OF PUBLIC POLICY AND IN THE INTEREST OF JUSTICE, THE CORPORATE VEIL WILL JUSTIFIABLY BE IMPALED ONLY WHEN IT BECOMES A SHIELD FOR FRAUD, ILLEGALITY OR INEQUITY COMMITTED AGAINST THIRD PERSONS.—** Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons. Hence, any application of the doctrine of piercing the corporate veil should be done with caution.

6. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; WAIVER OF MONETARY CLAIMS; WHERE THE PERSON MAKING THE WAIVER HAS DONE SO VOLUNTARILY, WITH A FULL UNDERSTANDING THEREOF, AND THE CONSIDERATION FOR THE QUITCLAIM IS CREDIBLE AND REASONABLE, THE TRANSACTION MUST BE RECOGNIZED AS BEING A VALID AND BINDING UNDERTAKING; CASE AT BAR.—** Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking. Not all quitclaims are *per se* invalid or against

policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transactions. In this case, the petitioners question the validity of the quitclaims they signed on the ground that Phil Carpet's closure was a mere pretense. As the closure of Phil Carpet, however, was supported by substantial evidence, the petitioners' reason for seeking the invalidation of the quitclaims must necessarily fail. Further, as aptly observed by the CA, the contents of the quitclaims, which were in Filipino, were clear and simple, such that it was unlikely that the petitioners did not understand what they were signing. Finally, the amount they received was reasonable as the same complied with the requirements of the Labor Code.

APPEARANCES OF COUNSEL

Cezar F. Maravilla, Jr. for petitioners.
Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the January 8, 2016 Decision[1] and April 11, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 140663, which affirmed the February 27, 2015 Decision[3] and March 31, 2015 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC

[1] Penned by Associate Justice Ramon R. Garcia with Associate Justice Leoncia R. Dimagiba and Associate Justice Jhosep Y. Lopez, concurring; *Rollo,* Vol. 1, p. 38-50.

[2] *Id*. at 52-54.

[3] The NLRC Decision was not attached to the petition.

[4] The NLRC Resolution was not attached to the petition.

NCR Case No. 01-00109-14; 01-00230-14; 01-00900-14; 01-01025-14; and 01-01133-14, five (5) consolidated complaints for illegal dismissal and unfair labor practice.

The Antecedents

The petitioners averred that they were employees of private respondent Philippine Carpet Manufacturing Corporation *(Phil Carpet)*. On January 3, 2011, they were notified of the termination of their employment effective February 3, 2011 on the ground of cessation of operation due to serious business losses. They were of the belief that their dismissal was without just cause and in violation of due process because the closure of Phil Carpet was a mere pretense to transfer its operations to its wholly owned and controlled corporation, Pacific Carpet Manufacturing Corporation *(Pacific Carpet)*. They claimed that the job orders of some regular clients of Phil Carpet were transferred to Pacific Carpet; and that from October to November 2011, several machines were moved from the premises of Phil Carpet to Pacific Carpet. They asserted that their dismissal constituted unfair labor practice as it involved the mass dismissal of all union officers and members of the Philippine Carpet Manufacturing Employees Association *(PHILCEA)*.

In its defense, Phil Carpet countered that it permanently closed and totally ceased its operations because there had been a steady decline in the demand for its products due to global recession, stiffer competition, and the effects of a changing market. Based on the Audited Financial Statements[5] conducted by SGV & Co., it incurred losses of ₱4.1M in 2006; ₱12.8M in 2007; ₱53.28M in 2008; and ₱47.79M in 2009. As of the end of October 2010, unaudited losses already amounted to ₱26.59M. Thus, in order to stem the bleeding, the company implemented several cost-cutting measures, including voluntary redundancy and early retirement programs. In 2007, the car carpet division was closed. Moreover, from a high production capacity of about 6,000 square meters of carpet a month in 2002, its final production capacity

[5] *Rollo* (Vol. I), pp. 124-208.

steadily went down to an average of 350 square meters per month for 2009 and 2010. Subsequently, the Board of Directors decided to approve the recommendation of its management to cease manufacturing operations. The termination of the petitioners' employment was effective as of the close of office hours on February 3, 2011. Phil Carpet likewise faithfully complied with the requisites for closure or cessation of business under the Labor Code. The petitioners and the Department of Labor and Employment *(DOLE)* were served written notices one (1) month before the intended closure of the company. The petitioners were also paid their separation pay and they voluntarily executed their respective Release and Quitclaim[6] before the DOLE officials.

The LA Ruling

In the September 29, 2014 Decision,[7] the Labor Arbiter *(LA)* dismissed the complaints for illegal dismissal and unfair labor practice. It ruled that the termination of the petitioners' employment was due to total cessation of manufacturing operations of Phil Carpet because it suffered continuous serious business losses from 2007 to 2010. The LA added that the closure was truly dictated by economic necessity as evidenced by its audited financial statements. It observed that written notices of termination were served on the DOLE and on the petitioners at least one (1) month before the intended date of closure. The LA further found that the petitioners voluntarily accepted their separation pay and other benefits and eventually executed their individual release and quitclaim in favor of the company. Finally, it declared that there was no showing that the total closure of operations was motivated by any specific and clearly determinable union activity of the employees. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint of Domingo P. Constantino, Jr. on ground

---

[6] *Rollo* (Vol. II), pp. 647-691.

[7] Penned by Labor Arbiter Marita V. Padolina; *rollo* (Vol. I), pp. 56-83.

of prescription of cause of action and the consolidated complaints of the rest of complainants for lack of merit.

SO ORDERED.[8]

Unconvinced, the petitioners elevated an appeal before the NLRC.

The NLRC Ruling

In its February 27, 2015 Decision, the NLRC affirmed the findings of the LA. It held that the Audited Financial Statements show that Phil Carpet continuously incurred net losses starting 2007 leading to its closure in the year 2010. The NLRC added that Phil Carpet complied with the procedural requirements of effecting the closure of business pursuant to the Labor Code. The *fallo* reads:

WHEREFORE, premises considered, complainants' appeal from the Decision of the Labor Arbiter Marita V. Padolina is hereby DISMISSED for lack of merit.

SO ORDERED.[9]

Undeterred, the petitioners filed a motion for reconsideration thereof. In its resolution, dated March 31, 2015, the NLRC denied the same.

Aggrieved, the petitioners filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed decision, dated January 8, 2016, the CA ruled that the total cessation of Phil Carpet's manufacturing operations was not made in bad faith because the same was clearly due to economic necessity. It determined that there was no convincing evidence to show that the regular clients of Phil Carpet secretly transferred their job orders to Pacific Carpet; and that Phil Carpet's machines were not transferred to Pacific Carpet but

---

[8] *Id*. at 83.

[9] *Id*. at 43.

were actually sold to the latter after the closure of business as shown by the several sales invoices and official receipts issued by Phil Carpet. The CA adjudged that the dismissal of the petitioners who were union officers and members of PHILCEA did not constitute unfair labor practice because Phil Carpet was able to show that the closure was due to serious business losses.

The CA opined that the petitioners' claim that their termination was a mere pretense because Phil Carpet continued operation through Pacific Carpet was unfounded because mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. The CA disposed the petition in this wise:

> WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED.
>
> SO ORDERED.[10]

The petitioners moved for reconsideration, but their motion was denied by the CA in its assailed resolution, dated April 11, 2016.

Hence, this present petition.

ISSUES

WHETHER THE PETITIONERS WERE DISMISSED FROM EMPLOYMENT FOR A LAWFUL CAUSE

WHETHER THE PETITIONERS' TERMINATION FROM EMPLOYMENT CONSTITUTES UNFAIR LABOR PRACTICE

WHETHER PACIFIC CARPET MAY BE HELD LIABLE FOR PHIL CARPET'S OBLIGATIONS

WHETHER THE QUITCLAIMS SIGNED BY THE PETITIONERS ARE VALID AND BINDING

The petitioners argue that Phil Carpet did not totally cease its operations; that most of the job orders of Phil Carpet were

---

[10] *Id.* at 49.

transferred to its wholly owned subsidiary, Pacific Carpet; and that the signing of quitclaims did not bar them from pursuing their case because they were made to believe that the closure was legal.

In its Comment,[11] dated August 26, 2016, Phil Carpet averred that the termination of the petitioners' employment as a consequence of its total closure and cessation of operations was in accordance with law and supported by substantial evidence; that the petitioners could only offer bare and self-serving claims and sham evidence such as financial statements that did not pertain to Phil Carpet; and that under the Labor Code, any compromise settlement voluntarily agreed upon by the parties with the assistance of the regional office of the DOLE was final and binding upon the parties.

In their Reply,[12] dated November 8, 2016, the petitioners alleged that the losses of Phil Carpet were almost proportionate to the net income of its subsidiary, Pacific Carpet; and that the alleged sale, which transpired between Phil Carpet and Pacific Carpet, was simulated.

The Court's Ruling

The petition is bereft of merit.

The petitioners were terminated from employment for an authorized cause

Under Article 298 (formerly Article 283) of the Labor Code, closure or cessation of operation of the establishment is an authorized cause for terminating an employee, *viz.*:

> Article 298. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the **closing or cessation of**

---

[11] *Rollo* (Vol. II), pp. 1138-1164.

[12] *Id.* at 1174-1186.

operations of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and **in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.** A fraction of at least six (6) months shall be considered as one (1) whole year. [Emphases supplied]

Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment, aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. In such a case, the employer is generally required to give separation benefits to its employees, unless the closure is due to serious business losses.[13]

Further, in *Industrial Timber Corporation v. Ababon,*[14] the Court held:

A reading of the foregoing law shows that a partial or total closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise. Under the first kind, the employer must sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was *bona fide* in character

---

[13] *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia*, 722 Phil. 846, 855 (2013).

[14] 515 Phil. 805 (2006).

and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.

In sum, under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.[15] [citations omitted]

In this case, the LA's findings that Phil Carpet suffered from serious business losses which resulted in its closure were affirmed *in toto* by the NLRC, and subsequently by the CA. It is a rule that absent any showing that the findings of fact of the labor tribunals and the appellate court are not supported by evidence on record or the judgment is based on a misapprehension of facts, the Court shall not examine anew the evidence submitted by the parties.[16] In *Alfaro v. Court of Appeals*,[17] the Court explained the reasons therefor, to wit:

The Supreme Court is not a trier of facts, and this doctrine applies with greater force in labor cases. Factual questions are for the labor tribunals to resolve. In this case, the factual issues have already been determined by the labor arbiter and the National Labor Relations Commission. Their findings were affirmed by the CA. Judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.

---

[15] *Id*. at 819.

[16] *Ignacio v. Coca-Cola Bottlers Phils., Inc.*, 417 Phil. 747, 752 (2001).

[17] 416 Phil. 310 (2001).

Indeed, factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the Supreme Court. Verily, their conclusions are accorded great weight upon appeal, especially when supported by substantial evidence. Consequently, the Supreme Court is not duty-bound to delve into the accuracy of their factual findings, in the absence of a clear showing that the same were arbitrary and bereft of any rational basis.[18]

Even after perusal of the records, the Court finds no reason to take exception from the foregoing rule. Phil Carpet continuously incurred losses starting 2007, as shown by the Audited Financial Statements[19] which were offered in evidence by the petitioners themselves. The petitioners, in claiming that Phil Carpet continued to earn profit in 2011 and 2012, disregarded the reason for such income, which was Phil Carpet's act of selling its remaining inventories. Notwithstanding such income, Phil Carpet continued to incur total comprehensive losses in the amounts of ₱9,559,716 and ₱12,768,277 for the years 2011 and 2012, respectively.[20]

Further, even if the petitioners refuse to consider these losses as serious enough to warrant Phil Carpet's total and permanent closure, it was a business judgment on the part of the company's owners and stockholders to cease operations, a judgment which the Court has no business interfering with. The only limitation provided by law is that the closure must be "*bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees."[21] Thus, when an employer complies with the foregoing conditions, the Court cannot prohibit closure "just because the business is not suffering from any loss or because of the desire to provide the workers continued employment."[22]

---

[18] *Id*. at 318.

[19] *Rollo* (Vol. I), pp. 124-208.

[20] *Id*. at 218-262.

[21] Article 298, Labor Code.

[22] *Angeles v. Polytex Design, Inc.*, 562 Phil. 152, 159 (2007).

Finally, Phil Carpet notified DOLE[23] and the petitioners[24] of its decision to cease manufacturing operations on January 3, 2011, or at least one (1) month prior the intended date of closure on February 3, 2011. The petitioners were also given separation pay equivalent to 100% of their monthly basic salary for every year of service.

The dismissal of the petitioners did not amount to unfair labor practice

Article 259 (formerly Article 248) of the Labor Code enumerates the unfair labor practices of employers, to wit:

Art. 259. Unfair Labor Practices of Employers. — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are

---

[23] *Rollo* (Vol. I), pp. 121-122.

[24] *Id*. at 554-595; *rollo* (Vol. II), pp. 596-643.

not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided,* That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

Unfair labor practice refers to acts that violate the workers' right to organize.[25] There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization.[26] Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.[27]

---

[25] ARTICLE 258. [247] *Concept of Unfair Labor Practice and Procedure for Prosecution Thereof.* — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. x x x

[26] *Culili v. Eastern Telecommunications Philippines, Inc.*, 657 Phil. 342, 368 (2011).

[27] *Id*.

The general principle is that one who makes an allegation has the burden of proving it. Although there are exceptions to this general rule, in the case of unfair labor practice, the alleging party has the burden of proving it.[28] In the case of *Standard Chartered Bank Employees Union (NUBE) v. Confesor*,[29] this Court elaborated:

> **In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.** Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[30] [Emphasis supplied]

Moreover, good faith is presumed and he who alleges bad faith has the duty to prove the same.[31]

The petitioners miserably failed to discharge the duty imposed upon them. They did not identify the acts of Phil Carpet which, they claimed, constituted unfair labor practice. They did not even point out the specific provisions which Phil Carpet violated. Thus, they would have the Court pronounce that Phil Carpet committed unfair labor practice on the ground that they were dismissed from employment simply because they were union officers and members. The constitutional commitment to the policy of social justice, however, cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor.[32]

In this case, as far as the pieces of evidence offered by the petitioners are concerned, there is no showing that the closure of the company was an attempt at union-busting. Hence, the

---

[28] *UST Faculty Union v. University of Santo Tomas*, 602 Phil. 1016, 1025 (2009).

[29] 476 Phil. 346 (2004).

[30] *Id*. at 367.

[31] *Central Azucarera De Bais Employees Union-NFL [CABEU-NFL] v. Central Azucarera De Bais, Inc. [CAB],* 649 Phil. 629, 645 (2010).

[32] *Mercury Drug Corporation v. NLRC*, 258 Phil. 384, 391 (1989).

charge that Phil Carpet is guilty of unfair labor practice must fail for lack of merit.

Pacific Carpet has a personality separate and distinct from Phil Carpet

The petitioners, in asking the Court to disregard the separate corporate personality of Pacific Carpet and to make it liable for the obligations of Phil Carpet, rely heavily on the former being a subsidiary of the latter.

A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.[33]

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.[34]

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.[35]

---

[33] *General Credit Corporation v. Alsons Development and Investment Corporation*, 542 Phil. 219, 231 (2007).

[34] *Philippine National Bank v. Andrada Electric Engineering Company*, 430 Phil. 882, 894 (2002).

[35] *Id.* at 894-895.

Further, the Court's ruling in *Philippine National Bank v. Hydro Resources Contractors Corporation* [36] is enlightening, *viz.*:

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

x x x x x x x x x

In this connection, case law lays down a three-pronged test to determine the application of the *alter ego* theory, which is also known as the instrumentality theory, namely:

(1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;

(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and

(3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

The first prong is the "instrumentality" or "control" test. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary

---

[36] 706 Phil. 297 (2013).

corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."

The second prong is the "fraud" test. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor. As such, it requires a showing of "an element of injustice or fundamental unfairness."

The third prong is the "harm" test. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.

To summarize, piercing the corporate veil based on the *alter ego* theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. The absence of any of these elements prevents piercing the corporate veil.[37] [Citations omitted]

The Court finds that none of the tests has been satisfactorily met in this case.

Although ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as *indicia* of control, by themselves and without more, these circumstances are insufficient to establish an alter ego relationship or connection between Phil Carpet on the one hand and Pacific Carpet on the other hand, that will justify the puncturing of the latter's corporate cover.[38]

---

[37] *Id*. at 309-312.

[38] *Id*. at 313.

This Court has declared that "mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."[39] It has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."[40]

It must be noted that Pacific Carpet was registered with the Securities and Exchange Commission on January 29, 1999,[41] such that it could not be said that Pacific Carpet was set up to evade Phil Carpet's liabilities. As to the transfer of Phil Carpet's machines to Pacific Carpet, settled is the rule that "where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, *by that fact alone*, liable for the debts and liabilities of the transferor."[42]

All told, the petitioners failed to present substantial evidence to prove their allegation that Pacific Carpet is a mere alter ego of Phil Carpet.

The quitclaims were valid and binding upon the petitioners

Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking.[43] Not all quitclaims are *per se* invalid or against policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of

---

[39] *Id*.

[40] *Pacific Rehouse Corporation v. CA*, 730 Phil. 325, 352 (2014).

[41] *Rollo* (Vol. II), p. 851.

[42] *Pantranco Employees Association v. NLRC*, 600 Phil. 645, 660 (2009).

[43] *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 263 (2003).

settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transactions.[44]

In this case, the petitioners question the validity of the quitclaims they signed on the ground that Phil Carpet's closure was a mere pretense. As the closure of Phil Carpet, however, was supported by substantial evidence, the petitioners' reason for seeking the invalidation of the quitclaims must necessarily fail. Further, as aptly observed by the CA, the contents of the quitclaims, which were in Filipino, were clear and simple, such that it was unlikely that the petitioners did not understand what they were signing.[45] Finally, the amount they received was reasonable as the same complied with the requirements of the Labor Code.

WHEREFORE, the petition is **DENIED**. The January 8, 2016 Decision and April 11, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 140663, are **AFFIRMED** *in toto*.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[44] *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*, 357 Phil. 113, 126 (1998).

[45] *Rollo* (Vol. I), p. 47.

[*] Per Special Order No. 2445 dated June 16, 2017.

THIRD DIVISION

[G.R. No. 224532. June 21, 2017]

CONSTANCIO CADERAO BALATERO, *petitioner, vs.* **SENATOR CREWING (MANILA) INC., AQUANAUT SHIPMANAGEMENT LTD., ROSE AARON and CARLOS BONOAN, MV MSC FLAMINIA,** *respondents.*

[G.R. No. 224565. June 21, 2017]

SENATOR CREWING (MANILA) INC., AQUANAUT SHIPMANAGEMENT LTD., ROSE AARON and CARLOS BONOAN, *petitioners, vs.* **CONSTANCIO C. BALATERO,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); GRANT OF PERMANENT TOTAL DISABILITY COMPENSATION TO SEAFARERS; IN CASE NO THIRD DOCTOR IS APPOINTED BY THE PARTIES, THE LABOR TRIBUNAL AND THE COURTS SHALL ASSESS THE INHERENT MERITS OF THE DIVERGENT FINDINGS OF THE COMPANY-DESIGNATED DOCTOR AND THE SEAFARER'S CHOSEN PHYSICIAN; APPLICATION IN CASE AT BAR.— In Balatero's case, the company-designated doctor had made a final Grade 7 Disability Rating beyond 120 days from repatriation. In legal contemplation, such partial disability was by then already deemed permanent. As a result thereof, the issue of non-referral to a third doctor is rendered inconsequential. In *Dalusong*, the Court instructed that in case no third doctor is appointed by the parties, the labor tribunal and the courts shall assess the inherent merits of the divergent findings of the company-designated doctor and the seafarer's chosen physician. In the case at bar, Dr. Lara-Orencia had considered the tests and procedures done on Balatero, and the latter's health status then, noting his recurrent chest pains, easy fatigability and intake of a total of five maintenance medicines.

> Dr. Lara-Orencia related Balatero's conditions to the POEA SEC, which listed CAD and Uncontrolled Hypertension as occupational diseases, and the physical and psychological stress, to which a seafarer is exposed. Dr. Lara-Orencia then concluded that Balatero cannot return to his job as 3rd Officer. x x x It also bears stressing that jurisprudence is replete with doctrines granting permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation. In *précis*, the Court is compelled to reinstate the LA and NLRC's ruling granting Balatero permanent total disability compensation, and set aside the CA's disquisition that only benefits pertaining to Grade 7 Disability Rating should be awarded on the basis of the following: (1) Dr. Lara-Orencia's ample explanation on how she had arrived at a permanent total disability assessment; (2) the recommendations of DOH A.O. No. 2007-0025 on the issuance of fit-to-work certificates; and (3) jurisprudence granting permanent total disability compensation to seafarers suffering from hypertensive cardiovascular diseases, who were either under the treatment of, or issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for Constancio C. Balatero.

Del Rosario & Del Rosario for Senator Crewing [Manila], Inc., *et al.*

D E C I S I O N

REYES, *J.*:

Before the Court are two consolidated petitions for review on *certiorari*. The first[1] is filed by Constancio Caderao Balatero (Balatero) against Senator Crewing (Manila), Inc. (SCMI), Aquanaut Shipmanagement Ltd. (Aquanaut), Rose Aaron (Aaron), Carlos Bonoan (Bonoan) and MV MSC Flaminia (for

[1] *Rollo* (G.R. No. 224532), pp. 3-32.

brevity, they are to be referred to collectively as "the respondents" despite the fact that they are the petitioners in G.R. No. 224565). The second,[2] on the other hand, is filed by the respondents against Balatero. Both petitions assail the Court of Appeals' (CA) Decision[3] and Resolution,[4] dated February 4, 2016 and May 2, 2016, respectively, in CA-G.R. SP No. 142095, which reversed the rulings of the Labor Arbiter (LA) and the National Labor Relations Commission (NLRC) awarding to Balatero the amount of US$60,000.00 as permanent total disability benefits, plus 10% attorney's fees.

Antecedents

SCMI is a local manning agency, with Aaron and Bonoan, as President and Crewing Superintendent, respectively. Aquanaut is among SCMI's foreign principals.[5]

Balatero was initially engaged by the respondents as an able-bodied seaman on April 12, 1997. He had worked his way up to become 2nd Officer and had boarded 18 of the respondents' ships.[6]

On July 31, 2013, after having been found as *"fit to work"* upon compliance with the required Pre-Employment Medical Examination (PEME), Balatero boarded MV MSC Flaminia[7] for a six-month contract[8] as 3rd Officer, with a basic monthly salary of US$1,120.00, plus overtime pay and subsistence

---

[2] *Rollo* (G.R. No. 224565), pp. 30-51.

[3] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan concurring; *id.* at 15-26.

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

[5] *Rollo* (G.R. No. 224532), p. 4.

[6] *Id*.

[7] In July of 2012, MV MSC Flaminia had caught fire. Hence, when Balatero boarded the ship about a year after the fire, the cargo hold still emitted burned cargo chemical, and chicken and beef odors. Flies and insects were all over. Later, the ship was dry-docked to dispose of remaining ash, burned cargoes, and contaminated water ballast, *id*. at 6.

[8] *Id*. at 34.

allowance. He accepted a lower post merely out of loyalty to SCMI and Aquanaut.[9]

On December 22, 2013, Balatero experienced chest pains, with palpitations and shortness of breath. He was taken to Odense University Hospital (Odense) in Denmark, diagnosed to have an elevated blood pressure, prescribed anti-hypertensive medicines, and discharged thereafter.[10]

On January 2, 2014, Balatero suffered from similar symptoms and was again brought to Odense, where he was advised to continue with the earlier prescribed anti-hypertensive medicines, and be repatriated for further medical evaluation.[11]

Balatero disembarked from the ship and arrived in Manila on January 5, 2014. The day after, he reported to SCMI's office for post-medical examination and was referred to Metropolitan Medical Center under the care of company-designated physician, Dr. Richard Olalia (Dr. Olalia). In the Medical Report dated January 8, 2014, Dr. Olalia found Balatero to be suffering from "*Uncontrolled Hypertension; Unstable Angina; To Consider Coronary Artery Disease [CAD]; Dyslipidemia*," the etiologies of which were multi-factorial but not work-related.[12]

Balatero was later referred to Cardinal Santos Medical Center under the care of Dr. Roy Garrido (Dr. Garrido), an interventional cardiologist. Balatero underwent Coronary Angiogram and Aortogram, which revealed that he had "*Severe [CAD] of the [Left Anterior Descending], D2 and [Right Posterior Descending Artery]; and Moderate [CAD] LCx*."[13]

On February 17, 2014, Balatero underwent Percutaneous Transluminal Coronary Angioplasty[14] (2 stents of the Mid Left

---

[9] *Id*. at 5, 66-67.

[10] *Id*. at 6, 55.

[11] Medical Examination Report, *id*. at 54.

[12] *Id*. at 75, 86.

[13] Cardiovascular Catheterization & Interventional Laboratory Report, *id*. at 56.

[14] *Id*. at 57.

Anterior Descending and Ostio Proximal Right Posterior Descending Artery).[15] In Balatero's subsequent medical check ups, Dr. Garrido prescribed maintenance medicines, which as of May 29, 2014 totalled five.[16] The medical expenses were shouldered by the respondents, and Balatero was also paid his sickness allowance.[17] He was subsequently declared fit to work, but with medical maintenance for the rest of his life.[18]

Unconvinced about his fitness to resume sea duties, Balatero consulted Dr. Li-Ann Lara-Orencia (Dr. Lara-Orencia), an occupational doctor. As indicated in the Medical Certificate[19] dated June 3, 2014, Dr. Lara-Orencia found Balatero to be suffering from "*Hypertensive Cardiovascular Disease*," which was "*precipitated by the stressful nature of his work*." Further, under Item No. 11(c) of the Philippine Overseas Employment Agency's (POEA) Standard Employment Contract (SEC) for Seafarers, CAD is a compensable illness. Under Item No. 13, Uncontrolled Hypertension, arising from exposure to extreme physical and psychological stress at work, is an occupational illness. Dr. Lara-Orencia then concluded that Balatero cannot return to his employment as 3rd Officer due to the latter's on and off chest pains, "*easy fatigability*" and continuous intake of five maintenance medicines, to wit, "*ASA 80 mg.*,[20] *Clopidogrel 75 mg.*,[21]

---

[15] Medical Certificate dated June 3, 2014, *id*. at 63-64.

[16] *Id*. at 58-59, 61-62.

[17] *Id*. at 75.

[18] *Id*. at 75-76.

[19] *Id*. at 63-64.

[20] **For treatment of mild to moderate pain; fever; various inflammatory conditions**; reduction of risk of death or MI in **patients with previous infarction or unstable angina pectoris**, or recurrent transient ischemia attacks or stroke **in men who have had transient brain ischemia caused by platelet emboli**. < *https://www.drugs.com/ppa/ aspirin-acetylsalicylic-acid-asa.html* > visited last June 13, 2017. (Emphasis ours)

[21] Clopidogrel Tablets belong to a group of medicines called antiplatelet medicinal products. Platelets are very small structures in the blood, which clump together during blood clotting. By preventing this clumping, antiplatelet

Candesartan+Amlodipine,[22] *Carvedilol*[23] *and Rosuvastatin 20 mg*."[24]

Balatero demanded permanent total disability benefits, which the respondents denied on the ground that after treatment and rehabilitation, the company-designated doctor had assessed Balatero with a disability of Grade 7 (*Moderate Residuals of Disorders*) under the POEA SEC.[25]

Balatero filed before the NLRC a complaint for permanent total disability compensation, sickness allowance, damages and attorney's fees. He claimed that his sea duties as 2nd and 3rd

---

medicinal products reduce the chances of blood clots forming (a process called thrombosis).

Clopidogrel Tablets are taken **to prevent blood clots** (thrombi) forming in hardened blood vessels (arteries), a process known as atherothrombosis, which can lead to atherothrombotic events (such as stroke, heart attack or death). <*http://www.drugs.com/uk/clopidogrel-75mg-tablets-393utml*>visited last June 13, 2017. (Emphasis ours)*Id*. at 63-64.

[22] Fixed-dose combinations of an angiotensin receptor blocker, candesartan cilexetil, and a calcium channel blocker, amlodipine besilate (candesartan/ amlodipine 8/2.5 or 8/5 mg), were approved in Japan for once-daily oral administration in **hypertensive patients**. Recent data showed that a **fixed-dose combination of candesartan and amlodipine lowered Blood Pressure safely and rapidly, providing a potential opportunity to improve the rate of Blood Pressure control.** <*https://www.ncbi.nlm.nih. gov/pubmed/22651833*> visited last June 13, 2017. (Emphasis ours)

[23] Carvedilol is a beta-blocker. Beta-blockers affect the heart and circulation (blood flow through arteries and veins).

Carvedilol is used to **treat heart failure and hypertension** (high blood pressure). It is also used after a heart attack that has caused your heart not to pump as well. <*https://www.drugs.com/carvedilol.html* > visited last June 13, 2017. (Emphasis ours)

[24] *Rosuvastatin* is used along with a proper diet **to help lower "bad" cholesterol and fats (such as LDL, triglycerides) and raise "good" cholesterol (HDL) in the blood**. It belongs to a group of drugs known as "**statins**." It works by reducing the amount of cholesterol made by the liver. Lowering "bad" cholesterol and triglycerides and raising "good" cholesterol decreases the risk of heart disease and helps to prevent strokes and heart attacks. <*http://www.webmd com/drugs/2/drug-76701/rosuvastatin-oral/details*> visited last June 13,2017. (Emphasis ours)

[25] *Rollo* (G.R. No. 224532), p. 87.

Officer were strenuous, and had exposed him to unhealthy working conditions, extreme temperatures and contaminants, which either directly caused his illnesses or contributed thereto. The respondents, however, denied the work-relatedness and compensability of Balatero's illnesses. They pointed out Dr. Olalia's Medical Report, dated January 8, 2014, indicating that Dyslipidemia is caused by defects in lipid metabolism and/or high fat diet, hence, not work-related. Further, CAD arises from the gradual deposits of fats, fibrin and clots in the coronary artery spanning years. Diabetes Mellitus, age, sex, hypertension, smoking and elevated cholesterol levels, out of which CAD may develop, are not work-related as well.[26]

Ruling of the LA

On December 29, 2014, the LA rendered a Decision[27] in NLRC NCR OFW Case No. (M) 07-09272-14, the dispositive portion of which states:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding [Balatero] to have been entitled to total and permanent disability benefits under the POEA Contract. As prayed for, respondents are hereby ordered to pay [Balatero] the amount of **US$60,000.00** representing his total and permanent disability benefits under the POEA Contract and attorney's fees of 10% of the said amount.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED.**[28]

Citing *Wallem Maritime Services, Inc., et al. v. NLRC, et al.*,[29] the LA declared that the assessments of both the company-designated physicians and those consulted by the seafarers on their own accord are not conclusive, thus, need evaluation on their inherent merits. Moreover, assuming *arguendo* that Balatero

---

[26] *Id.* at 68-69.

[27] Rendered by LA J. Potenciano F. Napenas, Jr.; *id.* at 66-73.

[28] *Id.* at 72-73.

[29] 588 Phil. 27 (2008).

was already afflicted with cardiovascular disease prior to his employment with the respondents, his exposure to stressful working conditions and a diet of unhealthy, fatty and salty foods while on board the ship had likely triggered, contributed to the development of, or aggravated his condition. The LA also noted the respondents' inconsistent stances in initially declaring that Balatero's illnesses were not work-related, and eventually determining that he had a Disability Grade of 7 under the POEA SEC. The LA, however, denied Balatero's claim for moral and exemplary damages, as there was inadequate evidence of bad faith on the part of the respondents.[30]

Ruling of the NLRC

The *fallo* of the NLRC Resolution,[31] dated June 8, 2015 in NLRC LAC No. 05-000403-15(4), reads:

> WHEREFORE, premises considered, respondents' appeal is **DISMISSED** for lack of merit.
>
> The Decision of the [LA] is **AFFIRMED**.
>
> SO ORDERED.[32]

The NLRC again considered Balatero's length of service rendered aboard 18 of the respondents' ships, and the stressful and unhealthy conditions thereat, which contributed to or aggravated the development of Balatero's Hypertensive Cardiovascular Disease. Further, despite the continuous intake of prescription medicines, there was no assurance given by the company-designated physicians that Balatero would be able to fully recover from his condition and perform his work like he did before. The NLRC also agreed with the LA that since Balatero was forced to litigate to protect his rights, he is entitled to 10% of the award as attorney's fees.[33]

---

[30] *Rollo* (G.R. No. 224532), pp. 70-72.

[31] *Id*. at 74-80.

[32] *Id*. at 79.

[33] *Id*. at 78-79.

On July 13, 2015, the NLRC issued a Resolution[34] denying the respondents' motion for reconsideration (MR).

Ruling of the CA

On September 29, 2015, pending the resolution of their petition for *certiorari* filed before the CA, the respondents conditionally paid Balatero the amount of US$66,000.00, with the provision that in case of a reversal of the NLRC's judgment by the CA or this Court, the sum shall be returned.[35]

On February 4, 2016, the CA rendered the herein assailed Decision,[36] the *fallo* of which reads as follows:

> **WHEREFORE**, the petition is **PARTLY GRANTED**. The assailed Resolutions dated June 8, 2015 and July 13, 2015 of the [NLRC], Second Division, in NLRC LAC N[o]. 05-000403-15(4)/ NLRC NCR OFW (M) 07-09272-14 are hereby **SET ASIDE**. Consequently, a new judgment is hereby entered directing [SCMI] and [Aquanaut] to jointly and severally pay [Balatero] the sum of US$20,900.00, or its equivalent amount in Philippine currency at the time of payment.
>
> **SO ORDERED.**[37]

In denying Balatero's claims for permanent total disability compensation and attorney's fees, and ordering SCMI and Aquanaut to solidarily pay him the amount of US$20,900.00 corresponding to Grade 7 Disability Rating benefits, the CA explained that:

> [I]t is jurisprudentially settled that cardiovascular disease, [CAD], and other heart ailments are work-related. In *Magsaysay Mitsui Osk Marine, Inc., et al. vs. Juanita G. Bengson*, the High Court enunciated that the cardiovascular illnesses of therein complainant, who has been serving for the petitioners as Third Mate for twelve (12) years, were work-related. The High Court further said that considering that the

---

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

[35] *Rollo* (G.R. No. 224565), pp. 132-134.

[36] *Id*. at 15-26.

[37] *Id*. at 25.

employment contracts of the complainant were continuously renewed, it can be said that he had spent much of his productive years with petitioners, his years of service certainly took a toll on his body, and he could not have contracted his illness elsewhere except while working for petitioners. Given that, and coupled with the evidence on record showing how [Balatero's] working conditions caused or aggravated his illnesses, We uphold the finding of the lower tribunals that [Balatero's] illnesses were work-related and/or work-aggravated.

But even if We agree with the conclusion of the lower tribunals that [Balatero's] illnesses were work-related, We hold that his claim for permanent disability benefits must fail.

At this juncture, We point out that one of the assigned errors raised by the [respondents] was that assuming for the sake of argument that [Balatero's] illnesses were work-related, only the amount of US$20,900.00 corresponding to Disability Grading of 7 — *Moderate residuals o[f] disorder* — was due the latter and nothing more. On the other hand, [Balatero] claimed that he consulted a second doctor because the company-designated physician declared him fit to work after his angioplasty and after being required to take maintenance medications. x x x [T]he pivotal question now that We think should be confronted is which findings should prevail: the findings of the company-designated physician or the assessment by [Balatero's] personal physician that he was unfit for sea duties, hence, permanently disabled? A related question immediately follows — how are the conflicting assessments to be resolved?

As previously stated, Section 20 (A) (3) of the 2010 POEA-SEC provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the employer and the seafarer, and the third doctor's decision shall be final and binding on both parties. Consequently, this referral to a third doctor has been held by the High Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. x x x[.]

x x x x x x x x x

Moreover, We observe that the assessment made by [Balatero's] physician-of-choice was only issued after a one-time medical treatment. Also, a reading of the certification of [Balatero's] doctor would suggest

that the same was bare of essential facts as to how the medical conclusions were arrived at. Aside from the fact that [Balatero] was examined once, no series of tests and treatments were likewise conducted to support the diagnosis of the latter's condition. Thus, We are of the view that such assessment cannot be given credence for being questionable and suspicious.

x x x Accordingly, [Balatero] is entitled to receive disability benefits corresponding to the Grade 7 disability rating in view also of the fact that [the respondents] had manifested their willingness to pay [Balatero] the disability compensation in the amount of US$20,900.00 corresponding to such grade. The amount shall be paid jointly and severally by [SCMI] and [Aquanaut] but with the exception of [Aaron] and [Bonoan,] who are hereby ordered excluded as parties solidarity liable to pay the amount due [to Balatero.] Be it remembered that [SCMI] has a personality separate and distinct from that of its officers, thus, [Aaron] and [Bonoan] cannot be held solidarily liable for the amount due.

x x x Under Article 2208 of the Civil Code, attorney's fees can be recovered when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Furthermore, an award of attorney's fees is the exception rather than the rule, hence, it is necessary for the lower tribunal to make findings of fact and law which bring the case within the exception and justify the grant of the award. Here, We find that none of the exceptions applies.[38] (Citations omitted)

In the herein assailed resolution, the CA denied the respective MRs separately filed by Balatero and the respondents.

Issues

In G.R. No. 224532, Balatero presents for consideration the issues of whether or not the CA erred in holding that:

(1) he only suffers from Grade 7 Disability, hence, only entitled to benefits corresponding thereto;

(2) no attorney's fees and moral and exemplary damages should be awarded to him;

---

[38] *Id*. at 22-25.

(3) Aaron and Bonoan cannot be held solidarily liable with SCMI and Aquanaut in the payment of the monetary awards; and

(4) there is no merit in his MR, which did not raise new issues.[39]

On the other hand, in G.R. No. 224565, the respondents challenge Balatero's entitlement to partial disability compensation claiming that the latter's illnesses are not work-related.[40]

Balatero points out that Article 192 of the Labor Code explicitly provides that temporary total disability shall be deemed permanent and total if it lasts continuously for more than 120 days. He also invokes *Crystal Shipping, Inc. v. Natividad*,[41] where the Court granted permanent total disability benefits to a seafarer for his inability to perform his customary work for more than 120 days. Balatero further cites *Carcedo v. Maine Marine Philippines, Inc.*,[42] where the Court awarded total and permament disability compensation to a seafarer assessed to have an 8% impediment rating on the 63rd day from his repatriation, but who was still incapacitated to perform his usual sea duties by reason of pending medical treatments and confinement beyond the 120-day period.[43]

Balatero likewise emphasizes that under the Medical Standards in the Conduct of PEME for Seafarers,[44] his cardiovascular

---

[39] *Rollo* (G.R. No. 224532), p. 9.

[40] *Rollo* (G.R. No. 224565), p. 38.

[41] 510 Phil. 332 (2005).

[42] G.R. No. 203804, April 15, 2015, 755 SCRA 543.

[43] *Rollo* (G.R. No. 224532), pp. 12-15.

[44] Department of Health Administrative Order No. 2007-0025, which in part reads:

The list of medical conditions cited below per System Classification are mere examples which may render a seafarer unfit. These can also be used to justify restrictions on time, position, trade area or type of vessels. x x x:

conditions, which require him to take more than two maintenance medicines, render him unfit for service.[45]

Balatero further insists that under Section 20(A)(3)[46] of the 2010 POEA SEC, in case of variance between the assessments of the company-designated doctor and the seafarer's physician of choice, referral to a third doctor is merely optional and directory, not mandatory. The Court reiterated the foregoing in *Maersk Filipinas Crewing, Inc./Maersk Services Ltd., et al. v. Mesina*.[47] In *Dalusong v. Eagle Clarc Shipping Philippines, Inc., et al.*,[48] the Court declared that in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting

---

x x x x x x x x x

G. CONDITIONS OF THE CARDIOVASCULAR SYSTEM There shall be no acute or chronic cardiovascular condition **limiting physical activity** required for sea duties, **requiring more than two (2) maintenance oral medicines and close monitoring, or causing significant disability**.

x x x x x x x x x

– [**CAD**]

– **Coronary Angioplasty (within six months)**, with history of AMI, left ventricular systolic dysfunction, **uncontrolled Diabetes Mellitus**, **Hypertension** and **Dyslipidemia**

x x x x x x x x x

– Hypertension Uncontrolled Hypertension, 140/90 and above

• **Hypertension requiring three (3) or more drugs**

– **Hypertension with associated clinical conditions** such as but not limited to:

x x x x x x x x x

• Heart Disease (LVH, Ischemic Heart Disease, prior MI, **prior revascularization**). (Emphasis ours)

[45] *Rollo* (G.R. No. 224532), pp. 16-18.

[46] If the doctor appointed by the seafarer disagrees with the assessment, a third doctor **may** be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis and underscoring ours)

[47] 710 Phil. 531 (2013).

[48] 742 Phil. 377 (2014).

medical assessments of the company-designated doctor, on one hand, and the seafarer's chosen physician, on the other.[49]

Balatero challenges as well the CA's declaration that Dr. Lara-Orencia's findings cannot be given credence as she had made her assessment on the basis of a single consultation. Balatero explains that his chosen doctor cannot be expected to replicate all the procedures, tests and examinations already conducted as to do otherwise would have been impractical. It was sufficient that Dr. Lara-Orencia interpreted the results of medical tests and procedures, and formulated her assessment therefrom.[50]

As to his claims for moral and exemplary damages, and attorney's fees, Balatero argues that the respondents' unjust denial of his disability benefits was attended by bad faith, and had compelled him to engage legal services to protect his rights. As Balatero had suffered moral anguish, severe anxiety and wounded feelings by reason thereof, the respondents' acts and omissions deserve correction.[51]

Anent Aaron and Bonoan's liabilities as corporate officers of SCMI, Balatero alleges that under Section 10[52] of Republic

---

[49] *Rollo* (G.R. No. 224532), pp. 19-20.

[50] *Id.* at 21.

[51] *Id.* at 22-24.

[52] SEC. 10. MONEY CLAIMS. – x x x.

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

x x x x x x x x x

(Emphasis ours)

Act No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, they should be held solidarily responsible for the money claims. In bad faith, they assented to the unlawful acts, or were grossly negligent in preventing the commission thereof.[53]

Lastly, Balatero points out that in *Coquilla v. Commission on Elections*,[54] the Court explained that reiterations in the MR of the issues passed upon by the court does not render a motion *pro forma*. To hold otherwise would mean that the movant should instead resort to new trial or other remedies.[55]

The respondents, on their part, contend that the POEA SEC does not state that a disability grading issued by a company-designated doctor automatically entitles a seafarer to disability benefits. A disability grading assessment is a form of evaluation, but it does not determine the work-relation of an illness. The said assessment can be made even if the illness is not work-related.[56]

The respondents also assert that Dr. Olalia categorically found Balatero's illnesses to be multi-factorial in origin, with genetic predisposition, unhealthy lifestyle, salty diet, smoking, Diabetes Mellitus, age and increased sympathetic activity as possible risk contributors. However, Balatero failed to adequately prove that the foregoing were attendant in, or arose out of, his shipboard employment.[57]

Ruling of the Court

The Court partially grants Balatero's petition, and denies that of the respondents.

Balatero's entitlement to permanent total disability compensation and attorney's fees

---

[53] *Rollo* (G.R. No. 224532), pp. 24-27.

[54] 434 Phil. 861 (2002).

[55] *Rollo* (G.R. No. 224532), p. 28.

[56] *Rollo* (G.R. No. 224565), p. 39.

[57] *Id*. at 39, 43.

As the LA, NLRC and the CA had uniformly and aptly found the work-relation of Balatero's sickness, the Court shall no longer belabour the issue.

The question to be resolved now is Balatero's entitlement *either* to permanent total disability compensation as recommended by his chosen physician, Dr. Lara-Orencia, or merely to that corresponding to Grade 7 Disability rating as assessed by the company-designated doctor.

The company-designated doctor assessed Balatero to be suffering from Grade 7 Disability under Section 32 of the POEA SEC, to wit, "*Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea*." On the other hand, Dr. Lara-Orencia found Balatero's Hypertensive Cardiovascular Disease as an occupational disease under Section 32(A), Items 11(c)[58] and 13(b)[59] of the POEA SEC. Due to Balatero's recurrent chest pains, "*easy fatigability*," and continuous intake of five maintenance medicines, he was no longer fit to resume sea duties as 3rd Officer.

It bears stressing that the parties did not refer the divergent medical assessments of their respective doctors to a third doctor,

---

[58] 11. CARDIO-VASCULAR EVENTS – to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

x x x x x x x x x

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship[.]

[59] 13. END ORGAN DAMAGE RESULTING FROM UNCONTROLLED HYPERTENSION

Impairment of function of the organs such as kidneys, heart, eyes and brain under the following conditions considered compensable:

x x x x x x x x x

b. In a patient not known to have hypertension has the following on his last PEME: normal BP, normal CXR and ECG/treadmill[.]

whose findings should have been final and binding pursuant to Section 20(A)(3) of the 2010 POEA SEC. For failure to refer the two conflicting medical findings to a third doctor mutually agreed upon by the parties, the CA ruled that Balatero breached a contractual obligation. Consequently, the assessment of the company-designated doctor was held as binding.

The Court examined the pleadings filed by the respondents and notes that *nowhere* did they categorically state the date when the company-designated doctor had issued Balatero's *final disability rating*. Further, the respondents did not attach or completely quote the medical report of the company-designated doctor. Hence, in the LA, NLRC and CA decisions, specific references to, and details about the aforecited date and medical report are conspicuously absent as well.

From the herein assailed decision, however, it can be inferred that the company-designated doctor declared Balatero fit for sea duties upon the conclusion of the *Percutaneous Transluminal Coronary Angioplasty* on February of 2014 and successive consultations thereafter.[60] To this, Balatero disagreed, thus, he sought the opinion of Dr. Lara-Orencia, who issued a Medical Certificate,[61] dated June 3, 2014, refuting the company-designated doctor's fit-to-work assessment of Balatero. On account of Dr. Lara-Orencia's findings, Balatero demanded for total and permanent disability compensation, which the respondents denied contending that only a Grade 7 Disability rating was proper.[62]

Viewed in the foregoing context, it can be concluded that as of June 3, 2014, which was more than 120 days from Balatero's repatriation, no final disability rating was yet issued by the respondents, *sans* proof too that the latter sought for an extension to further determine the seafarer's fitness to work. Dr. Olalia's Medical Report, dated January 8, 2014, which negated the work-relatedness of Balatero's medical condition, was issued merely

---

[60] *Rollo* (G.R. No. 224565), p. 17.

[61] *Rollo* (G.R. No. 224532), pp. 63-64.

[62] *Id*. at 87.

in the interim considering that tests and procedures were still to be performed. The said report cannot be considered as the final disability rating issued by the company-designated doctor.

In *Carcedo*,[63] the Court ruled that:

[A] partial and permanent disability could, by legal contemplation, become total and permanent. The Court in *Kestrel Shipping Co., Inc. v. Munar* held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, *viz*:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning [or] doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.
>
> Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled. x x x
>
> x x x x x x x x x

[63] *Supra* note 42.

> Indeed, the schedule of disabilities in the CBA, if there is one, or the POEA-SEC, should be the primary basis for the determination of a seafarer's degree of disability. However, the POEA-SEC and the CBA cannot be read in isolation from the Labor Code and the AREC. x x x.[64] (Citations omitted, underscoring ours and emphasis in the original deleted)

In Balatero's case, the company-designated doctor had made a final Grade 7 Disability Rating beyond 120 days from repatriation. In legal contemplation, such partial disability was by then already deemed permanent. As a result thereof, the issue of non-referral to a third doctor is rendered inconsequential.

In *Dalusong*,[65] the Court instructed that in case no third doctor is appointed by the parties, the labor tribunal and the courts shall assess the inherent merits of the divergent findings of the company-designated doctor and the seafarer's chosen physician.[66]

In the case at bar, Dr. Lara-Orencia had considered the tests and procedures done on Balatero, and the latter's health status then, noting his recurrent chest pains, easy fatigability and intake of a total of five maintenance medicines. Dr. Lara-Orencia related Balatero's conditions to the POEA SEC, which listed CAD and Uncontrolled Hypertension as occupational diseases, and the physical and psychological stress, to which a seafarer is exposed. Dr. Lara-Orencia then concluded that Balatero cannot return to his job as 3rd Officer.[67]

In contrast, the respondents, in their pleadings filed with the Court, do not amply explain why the Grade 7 Disability Rating, which they issued, should instead prevail. Repeatedly, the respondents relied on the supposed conclusive character of the findings of the company-designated physicians, without explaining in substance how they were arrived at.[68] The CA,

---

[64] *Id*. at 558-560.

[65] *Supra* note 48.

[66] *ld*. at 386.

[67] *Rollo* (G.R. No. 224532), pp. 63-64.

[68] *Id*. at 112-113; *rollo* (G.R. No. 224565), pp. 46-48.

on the other hand, highlighted Balatero's non-compliance with the mandatory procedure of referral to a third doctor, and no longer considered the inherent merits of the conflicting medical assessments made by Dr. Olalia and Dr. Garrido, on one hand, and Dr. Lara-Orencia, on the other.[69]

The Court notes too that as pointed out by Balatero, Department of Health (DOH) Administrative Order (A.O.) No. 2007-0025 recommends non-issuance of fit-to-work certifications to seafarers "*with acute or chronic cardiovascular condition limiting physical activity, requiring more than two (2) maintenance oral medicines and close monitoring, or causing significant disability*," specifically those (1) suffering from CAD, (2) has undergone Coronary Angioplasty within six months, with history of Uncontrolled Diabetes Mellitus, Hypertension and Dyslipidemia, and (3) Hypertension requiring three or more drugs, among others. Balatero falls within the foregoing category.

It also bears stressing that jurisprudence[70] is replete with doctrines granting permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.

In *précis*, the Court is compelled to reinstate the LA and NLRC's ruling granting Balatero permanent total disability compensation, and set aside the CA's disquisition that only benefits pertaining to Grade 7 Disability Rating should be awarded on the basis of the following: (1) Dr. Lara-Orencia's ample explanation on how she had arrived at a permanent total disability assessment; (2) the recommendations of DOH A.O. No. 2007-0025 on the issuance of fit-to-work certificates; and (3) jurisprudence granting permanent total disability compensation

---

[69] *Rollo* (G.R. No. 224532), pp. 93-94.

[70] Please see *Valenzona v. Fair Shipping Corporation, et al.*, 675 Phil. 713 (2011); *Oriental Shipmanagement Co., Inc. v. Bastol*, 636 Phil. 358 (2010); *Iloreta v. Philippine Transmarine Carriers, Inc., et al.*, 622 Phil. 832 (2009).

to seafarers suffering from hypertensive cardiovascular diseases, who were either under the treatment of, or issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.

Anent Balatero's claims for moral and exemplary damages, the Court finds no grounds to disturb the uniform conclusion of the LA, NLRC and CA that the respondents' acts did not evince bad faith. Balatero was paid his sickness allowance and his medical expenses were likewise shouldered by the respondents.

As for Balatero's claim for attorney's fees, the LA and NLRC had granted the same, but which the CA later reversed. Since Balatero had been compelled to litigate due to the respondents' denial of his valid claims, the Court accordingly reinstates the award.[71]

Other matters

On the ground of mootness, the Court perceives no necessity to address the rest of the issues raised by Balatero. Pending the proceedings before the CA, the respondents had conditionally paid Balatero the amount of US$66,000.00, with the provision that in case of a reversal of the NLRC's judgment by the CA or SC, the sum shall be returned.[72] There is no more amount due and owing to Balatero, which Aaron and Bonoan, as corporate officers of SCMI, may be held responsible for. As to what matters may be raised in a litigant party's MR, the Court, finding the LA and NLRC's conclusions adverse to those of the CA's, had already reconsidered all the parties' allegations despite their being mere reiterations of those proffered in the proceedings below.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Court **SETS ASIDE** the Decision and Resolution, dated February 4, 2016 and May 2, 2016, respectively, of the Court of Appeals, in CA-G.R. SP No. 142095, which ordered Senator

---

[71] *Iloreta v. Philippine Transmarine Carriers, Inc., et al.*, *id.* at 843.

[72] *Rollo* (G.R. No. 224565), pp. 132-134.

Crewing (Manila), Inc. and Aquanaut Shipmanagement Ltd. to solidarily pay Constancio Caderao Balatero the sum of US$20,900.00 as compensation corresponding to Grade 7 Disability Rating. Accordingly, the Court **REINSTATES** the Decision dated December 29, 2014, of the Labor Arbiter in NLRC NCR OFW Case No. (M) 07-09272-14, which was affirmed by the National Labor Relations Commission in its Resolution dated June 8, 2015 in NLRC LAC No. 05-000403-15(4), awarding Constancio Caderao Balatero permanent total disability compensation of US$60,000.00, plus ten percent (10%) attorney's fees. In view of the payment of the amount of ₱3,019,368.00, then the equivalent of the total award of US$66,000.00, tendered to Constancio Caderao Balatero on September 29, 2015, interest shall no longer be imposed, and this judgment is already deemed **SATISFIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Jardeleza, and *Tijam, JJ.*, concur.

SECOND DIVISION

[G.R. No. 226846. June 21, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFREY MACARANAS *y* FERNANDEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 6539 (ANTI-CARNAPPING ACT OF 1972), AS AMENDED BY REPUBLIC ACT 7659; CARNAPPING; DEFINED; AMENDMENTS TO THE ANTI-CARNAPPING ACT OF

1972, CLARIFIED.— R.A. No. 6539, or the Anti-Carnapping Act of 1972, as amended, defines carnapping as the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation against persons, or by using force upon things. x x x Three amendments have been made to the original Section 14 of the Anti-Carnapping Act in Section 20 of R.A. No. 7659: (1) the penalty of life imprisonment was changed to *reclusion perpetua*, (2) the inclusion of rape, and (3) the change of the phrase "*in the commission of the carnapping*" to "*in the course of the commission of the carnapping or on the occasion thereof.*" This third amendment clarifies the law's intent to make the offense a special complex crime, by way of analogy vis-a-vis paragraphs 1 to 4 of the Revised Penal Code on robbery with violence against or intimidation of persons. Thus, under the last clause of Section 14 of the Anti-Carnapping Act, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "*in the course of the commission of the carnapping or on the occasion thereof*." Consequently, where the elements of carnapping are not proved, the provisions of the Anti-Carnapping Act would cease to be applicable and the homicide or murder (if proven) would be punishable under the Revised Penal Code. So, essentially, carnapping is the robbery or theft of a motorized vehicle and it becomes qualified or aggravated when, in the course of the commission or on the occasion of the carnapping, the owner, driver or occupant is killed or raped. It is similar to the special complex crime of robbery with homicide.

2. ID.; ID.; ID.; ELEMENTS; TO PROVE THE SPECIAL COMPLEX CRIME OF CARNAPPING WITH HOMICIDE, THERE MUST BE PROOF NOT ONLY OF THE ESSENTIAL ELEMENTS OF CARNAPPING, BUT ALSO THAT IT WAS THE ORIGINAL DESIGN OF THE CULPRIT AND THE KILLING WAS PERPETRATED IN THE COURSE OF THE COMMISSION OF THE CARNAPPING OR ON OCCASION THEREOF.— [T]he elements of carnapping as defined and penalized under R.A. No. 6539, as amended are the following: 1) That there is an actual taking of the vehicle; 2) That the vehicle belongs to a person other than the offender himself; 3) That the taking is

without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and 4) That the offender intends to gain from the taking of the vehicle. Under the last clause of Section 14 of the R.A. No. 6539, as amended, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof." In other words, to prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof.

3. **ID.; ID.; ID.; SPECIAL COMPLEX CRIME OF CARNAPPING WITH HOMICIDE; IMPOSABLE PENALTY.—** [T]he RTC did not commit an error in imposing the penalty of *reclusion perpetua* considering that there was no alleged and proven aggravating circumstance. In line, however, with the recent jurisprudence, in cases of special complex crimes like carnapping with homicide, among others, where the imposable penalty is *reclusion perpetua*, the amounts of civil indemnity, moral damages, and exemplary damages are pegged at ₱75,000.00 each. The appellant is also ordered to pay ₱50,000.00 as temperate damages in lieu of the award of ₱25,000.00 as actual damages to the private complainant.

4. **ID.; REVISED PENAL CODE; CONSPIRACY; CONSPIRACY IS PRESENT WHEN ONE CONCURS WITH THE CRIMINAL DESIGN OF ANOTHER, INDICATED BY THE PERFORMANCE OF AN OVERT ACT LEADING TO THE CRIME COMMITTED.—** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an

overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE SUPREME COURT GIVES THE HIGHEST RESPECT TO THE TRIAL COURT'S EVALUATION OF THE TESTIMONY OF THE WITNESSES, CONSIDERING ITS UNIQUE POSITION IN DIRECTLY OBSERVING THE DEMEANOR OF A WITNESS ON THE STAND.— This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesse[s], considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesse[s]. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.

6. ID.; ID.; ID.; DENIAL AND ALIBI, AS DEFENSES; WHEN APPRECIATED; NOT PRESENT IN CASE AT BAR.— Anent appellant's defense of denial and alibi, this Court has consistently ruled that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters and that for the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime during its commission. In correctly ruling that the defense of denial and alibi of appellant is inconsequential, the CA stated the following: In the face of the serious accusation, accused-appellant merely interposed the defense of denial and alibi to prove his innocence. Time and again, this Court held that denial is an inherently weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. x x x The Court finds inadequate the accused-appellant's defense of alibi absent any credible corroboration from disinterested witnesses, to exculpate him of the crime charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of this Court is the appeal of the Decision[1] dated October 29, 2015 of the Court of Appeals (*CA*) dismissing appellant Jeffrey Macaranas y Fernandez's appeal and affirming with modification the Judgment[2] dated August 22, 2012 of the Regional Trial Court (*RTC*), Branch 79, Malolos, Bulacan in Criminal Case No. 38-M-2008, finding appellant guilty beyond reasonable doubt of violation of Republic Act (*R.A.*) No. 6539, otherwise known as the *Anti-Carnapping Act of 1972*.

The facts follow.

Frank Karim Langaman and his girlfriend Kathlyn Irish Mae Cervantes were at Meyland Village, Meycauayan, Bulacan, in the evening of February 18, 2007, aboard Frank's motorcycle, a green Honda Wave 125 with Plate No. NQ 8724, registered under the name of Jacqueline Corpuz Langaman. When they were about to leave the place, two (2) men, both wearing jackets and bonnets suddenly approached them, followed by a third man who was earlier standing at a post. One of the three men held Frank by the neck and shot Frank causing the latter to fall down. The same man pointed his gun at Kathlyn and demanded that she give him her cellphone. After Kathlyn gave her cellphone, the same man hit her on the back. Thereafter, Kathlyn pretended to be unconscious and saw that the men searched the body of Frank for any valuables. While the incident was taking place,

---

[1] Penned by Associate Justice Rodil V. Zalameda with the concurrence of Associate Justices Sesinando E. Villon and Myra V. Garcia-Fernandez; *rollo*, pp. 2-11.

[2] Penned by Presiding Judge Olivia V. Escubio-Samar; CA *rollo*, pp. 66-74.

the second man took Frank's motorcycle, while the third man, herein appellant, just stood to guard them and acted as the look-out. Afterwards, the three men left together riding Frank's motorcycle. It was then that Kathlyn was able to seek help and Frank was taken to the hospital.

According to Dr. Gene Patrick De Leon, Frank sustained a gunshot injury traversing the neck area which necessitated surgery. Eventually, Frank died on the 27th post-operative day or on March 30, 2007. The cause of Frank's death was "cardio pulmonary arrest secondary to the spinal cord injury with retained metallic foreign body secondary conjunction injury status post the surgery done which is laminectomy infusion with rods and screws," as shown in the Post-Mortem Certificate.

Thus, an Information was filed against appellant, Richard Lalata and a certain John Doe charging them of violation of R.A. No. 6539, which reads as follows:

> That on or about the 18th day of February, 2007, in the City of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with gun, by means of violence and intimidation, with intent of gain and without the consent of the owner, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously take, steal and carry away with them one Honda Wave 125 motorcycle with Plate No. NQ 8724 valued at ₱59,000.00 belonging to Jacqueline Corpuz [Langaman], to her damage and prejudice in the aforesaid amount of ₱59,000.00, and by reason or on the occasion of the commission of the said carnapping act, the said accused in furtherance of their conspiracy and with intent to kill did then and there wilfully, unlawfully and feloniously attack, assault and shoot Frank Karim Langaman with the gun they were then provided, hitting the latter on his neck which caused his death.

Appellant pleaded "not guilty" during his arraignment and after the pre-trial ended, the trial ensued.

The prosecution presented the testimonies of Jacqueline Langaman, Kathlyn Irish Mae Cervantes, Dr. Gene Patrick De Leon and SPO1 Hernan Roble Berciles, Jr.

Appellant, on the other hand, testified in his defense and denied the charges against him claiming that on February 18, 2007, he fetched his cousin Richard Lalata before proceeding to his father Erning Macaranas' house at Brgy. Lawa, where they usually eat and sleep. According to him, they left early in the morning of the following day and just slept the whole day at their house in Brgy. Daungan. Thereafter, sometime in June, 2007, barangay officials arrested him and claimed that they beat and mauled him in order to admit that he killed Frank, and under coercion, he pointed to his cousin Richard Lalata as the perpetrator.

The RTC, in its decision, found appellant guilty beyond reasonable doubt of the offense charged and disposed the case, as follows:

WHEREFORE, in view of all the foregoing, this Court finds accused Jeffrey Macaranas, **GUILTY** beyond reasonable doubt [of] the crime of Carnapping.

Accordingly, accused Jeffrey Macaranas is hereby **SENTENCED**:

(a) To suffer the penalty of Reclusion Perpetua;

(b) To indemnify the private complainant Jacqueline Langaman Corpuz the amount of Php50,000.00 as civil indemnity for the death of Frank Karim Corpuz Langaman;

(c) To pay the private complainant Jacqueline Langaman the amount of Php50,000.00 as temperate damages;

(d) To restore to the offended party, Jacqueline Langaman, the subject motorcycle or in default thereof, to indemnify said offended party in the sum of Php25,000.00; and

(e) To pay the costs of the suit.

The case against accused Richard Lalata who remained at large since the filing of the Information is ordered **ARCHIVED** to be revived upon his apprehension. Issue an alias warrant of arrest for the arrest of accused Lalata.

SO ORDERED.[3]

---

[3] *Id*. at 74. (Emphasis in the original)

On appeal, the CA affirmed the decision of the RTC with modification, thus:

WHEREFORE, premises considered, the instant Appeal is **DENIED**. Accordingly, the Judgment of the Regional Trial Court, Branch 79, Malolos, Bulacan, dated 22 August 2012 is hereby **AFFIRMED** but **MODIFIED** to read as follows:

x x x x x x x x x

Accordingly, accused Jeffrey Macaranas is hereby **SENTENCED**:

(a) To suffer the penalty of Reclusion Perpetua;

(b) To indemnify the private complainant Jacqueline Langaman [y] Corpuz the amount of **seventy-five thousand (Php75,000.00) pesos** as civil indemnity for the death of Frank Karim Corpuz Langaman;

(c) To pay the private complainant Jacqueline Langaman the amount of **fifty thousand (Php50,000.00) pesos** as **moral damages**;

(d) To pay the private complainant Jacqueline Langaman the amount of **thirty thousand (Php30,000.00) pesos** as **exemplary damages**;

(e) To pay the private complainant Jacquelime Langaman the amount of **twenty-five thousand (Php25,000.00) pesos** as **temperate damages in lieu of actual damages**;

(f) To restore to the offended party, Jacqueline Langaman, the subject motorcycle or in default thereof, to indemnify said offended party in the sum of Php25,000.00; and

(g) To pay the costs of the suit.

The damages awarded shall earn interest at six percent (6%) per annum from finality of judgment until fully satisfied.

The case against accused Richard Lalata who remained at large since the filing of the Information is ordered ARCHIVED to be revived upon his apprehension. Issue an alias warrant of arrest for the arrest of accused Lalata.

SO ORDERED.

SO ORDERED.[4]

Hence, the present appeal.

Appellant insists that the trial court and the CA committed an error in giving full credence to the testimony of the lone witness and in rejecting his defense of denial and alibi.

R.A. No. 6539, or the Anti-Carnapping Act of 1972, as amended, defines carnapping as the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation against persons, or by using force upon things.[5] By the amendment in Section 20 of R.A. No. 7659, Section 14 of the Anti-Carnapping Act now reads:

> SEC. 14. *Penalty for Carnapping*. Any person who is found guilty of carnapping, as this term is defined in Section two of this Act, shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence or intimidation of any person, or force upon things; *and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof*. (Emphasis supplied)

Three amendments have been made to the original Section 14 of the Anti-Carnapping Act: (1) the penalty of life imprisonment was changed to *reclusion perpetua*, (2) the inclusion of rape, and (3) the change of the phrase "*in the commission of the carnapping*" to "*in the course of the commission of the carnapping or on the occasion thereof*." This third amendment clarifies the law's intent to make the offense

---

[4] *Rollo*, pp. 14-15. (Emphasis in the original)

[5] Section 2, R.A. No. 6539.

a special complex crime, by way of analogy vis-a-vis paragraphs 1 to 4 of the Revised Penal Code on robbery with violence against or intimidation of persons. Thus, under the last clause of Section 14 of the Anti-Carnapping Act, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "*in the course of the commission of the carnapping or on the occasion thereof*." Consequently, where the elements of carnapping are not proved, the provisions of the Anti-Carnapping Act would cease to be applicable and the homicide or murder (if proven) would be punishable under the Revised Penal Code.[6]

"There is no arguing that the anti-carnapping law is a special law, different from the crime of robbery and theft included in the Revised Penal Code. It particularly addresses the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. But a careful comparison of this special law with the crimes of robbery and theft readily reveals their common features and characteristics, to wit: unlawful taking, intent to gain, and that personal property belonging to another is taken without the latter's consent. However, the anti-carnapping law particularly deals with the theft and robbery of motor vehicles. Hence a motor vehicle is said to have been carnapped when it has been taken, with intent to gain, without the owner's consent, whether the taking was done with or without the use of force upon things. Without the anti-carnapping law, such unlawful taking of a motor vehicle would fall within the purview of either theft or robbery which was certainly the case before the enactment of said statute."[7]

So, essentially, carnapping is the robbery or theft of a motorized vehicle and it becomes qualified or aggravated when,

---

[6] *People v. Fabian Urzais y Lanurias*, G.R. No. 207662, April 13, 2016, citing *People v. Santos*, 388 Phil. 993, 1005-1006 (2000).

[7] *Tan v. People*, 379 Phil. 999, 1009 (2000).

in the course of the commission or on the occasion of the carnapping, the owner, driver or occupant is killed or raped.[8] As we have ruled in *People v. Mejia*:[9]

> The killing or the rape merely qualifies the crime of carnapping x x x and no distinction must be made between homicide and murder. Whether it is one or the other which is committed "in the course of carnapping or on the occasion thereof" makes no difference insofar as the penalty is concerned.

It is similar to the special complex crime of robbery with homicide and in *People v. Bariquit,*[10] it was ruled that:

> In the present case, the accused-appellants were charged with, tried, and convicted for the crime of robbery with homicide. In our jurisdiction, this special complex crime is primarily classified as a crime against property and not against persons, homicide being a mere incident of the robbery with the latter being the main purpose and object of the criminal.
>
> Under Article 14 of the Revised Penal Code, treachery is applicable only to crimes against persons. Accordingly, inasmuch as robbery with homicide is a crime against property and not against persons, treachery cannot be validly considered in the present case.

Thus, the elements of carnapping as defined and penalized under R.A. No. 6539, as amended are the following:

1) That there is an actual taking of the vehicle;
2) That the vehicle belongs to a person other than the offender himself;
3) That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and
4) That the offender intends to gain from the taking of the vehicle.[11]

---

[8] *People v. SPO1 Lobitania*, 437 Phil. 213, 222 (2002).

[9] 341 Phil. 118, 143 (1997).

[10] 395 Phil. 823, 855-856 (2000).

[11] *People v. Bernabe and Garcia*, 448 Phil. 269, 280 (2003).

Under the last clause of Section 14 of the R.A. No. 6539, as amended, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof."[12] In other words, to prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof.[13]

In this particular case, all the elements are present as the pieces of evidence presented by the prosecution show that there were two (2) men both wearing jackets and bonnets, together with the appellant who approached the victim and the witness Kathlyn and employed force and intimidation upon them and thereafter forcibly took the victim's motorcycle and then shot the victim on the neck causing his death.

Appellant argues that the RTC, as well as the CA, erred in appreciating the testimony of the lone witness of the prosecution because of its inconsistencies and the improbability of her imputations.

This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesse[s], considering its unique position in directly observing the demeanor of a witness on the stand.[14] From its vantage point, the trial court is in the best position to determine the truthfulness of witnesse[s].[15] The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial

---

[12] *People v. Fabian Urzais y Lanurias*, *supra* note 6.

[13] *People v. Enrile Donio*, G.R. No. 212815, March 5, 2017, citing *People v, Aquino*, 724 Phil. 739, 757 (2014).

[14] *People v. Enrile Donio*, *supra*.

[15] *People v. Abat*, 731 Phil. 304, 311 (2014).

court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.[16]

The CA, therefore, did not err when it concurred with the RTC on the following:

> The testimony of Kathlyn satisfies the aforementioned test of credibility. More importantly, during her time at the witness stand, Kathlyn positively and categorically identified accused-appellant as one of the three (3) men who committed the crime. We agree with the court *a quo's* observation on this, thus –
>
> x x x x x x x x x
>
> The testimony of the Prosecution witness Kathlyn Irish Mae Cervantes reveals that she came face to face with accused Jeffrey Macaranas. Though the other two (2) accused wore bonnet at the time of the shooting incident, she was able to identify accused Jeffrey Macaranas and narrate to the court his specific participation in the carnapping incident. She testified that before the two (2) male persons approached her and Frank Karim, she saw accused Jeffrey Macaranas who was then standing beside a post, staring at them while they were moving slowly on board the motorcycle. Again, she saw Jeffrey following the two male persons who approached her and Frank Karim. Jeffrey Macaranas was just a meter away from her because he was near the person holding the motorcycle. Jeffrey Macaranas boarded the motorcycle together with his two (2) male companions immediately after the incident.
>
> x x x x x x x x x
>
> There was indeed a positive and unequivocal identification of the accused. It has long been settled that where the witnesses of the prosecution were not actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. Herein, no imputation of improper motive on the part of Kathlyn was ever made by the accused-appellant, as the latter even testified he was without knowledge of any grudge Kathlyn might have against him. Further, relationship *per se* of Kathlyn with the victim does not necessarily mean that her testimony is biased and/or fabricated.

---

[16] *Corpuz v. People*, 734 Phil. 353, 391 (2014).

x x x x x x x x x

Moreover, as correctly held by the People, through the OSG, any inconsistency, if at all, was already superseded by Kathlyn's positive identification of the accused-appellant in court. x x x

x x x x x x x x x[17]

Conspiracy was also proven in this case. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime,[18] which are indicative of a joint purpose, concerted action and concurrence of sentiments.[19] In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.[20] As the CA correctly ruled:

In the present case, conspiracy was evident from the coordinated movements of the three accused. Accused-appellant was seen standing by the post looking at Kathlyn and the victim aboard the motorcycle. When his co-accused approached the former, accused-appellant followed suit and was standing guard nearby, while his companions committed their criminal acts. After the victim fell down, and apparently thinking Kathlyn to be unconscious, the trio left together taking with them the victim's motorcycle. Clearly, the accused-appellant and company all acted in confabulation in furtherance of their common design and purpose, *i.e.*, to carnal the motorcycle. As aptly held by the court *a quo* thus —

x x x x x x x x x

---

[17] *Rollo*, pp. 9-10.

[18] *People v. Panida*, 369 Phil. 311, 341 (1999).

[19] *People v. Manes*, 362 Phil. 569, 579 (1999).

[20] *People v. Bato*, 401 Phil. 415, 424 (2000).

> From the acts of accused Jeffrey Macaranas, there was unity in his action with his co-accused and a concerted effort to commit the crime charged. The simultaneous acts of Macaranas and his two (2) companions indicate a joint purpose and concurrence of intentions on their part. x x x
>
> x x x x x x x x x[21]

Anent appellant's defense of denial and alibi, this Court has consistently ruled that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters[22] and that for the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime[23] during its commission.[24] In correctly ruling that the defense of denial and alibi of appellant is inconsequential, the CA stated the following:

> In the face of the serious accusation, accused-appellant merely interposed the defense of denial and alibi to prove his innocence. Time and again, this Court held that denial is an inherently weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the in the light of positive identification of the accused-appellant, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt, which is not the case here. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the prosecution witness who testified on affirmative matters. The Court finds adequate the accused-appellant's defense of alibi absent any

---

[21] *Rollo,* p. 12.

[22] *People v. Manalili,* 608 Phil. 498, 516-517 (2009).

[23] *People v. Mosquerra*, 414 Phil. 740, 749 (2001).

[24] *People v. Ramos, et al.*, 715 Phil. 193, 206 (2013).

credible corroboration from disinterested witnesses, to exculpate him of the crime charged.[25]

As to the imposable penalty under Section 14 of RA No. 6539, as amended, it is provided that:

> Sec. 14. *Penalty for Carnapping*. — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

Thus, the RTC did not commit an error in imposing the penalty of *reclusion perpetua* considering that there was no alleged and proven aggravating circumstance. In line, however, with the recent jurisprudence,[26] in cases of special complex crimes like carnapping with homicide, among others, where the imposable penalty is *reclusion perpetua*, the amounts of civil indemnity, moral damages, and exemplary damages are pegged at ₱75,000.00 each. The appellant is also ordered to pay ₱50,000.00 as temperate damages in lieu of the award of ₱25,000.00 as actual damages to the private complainant.[27] All the other dispositions of the CA stays.

WHEREFORE, the appeal of Jeffrey Macaranas y Fernandez is **DISMISSED**. Consequently, the Decision dated October 29, 2015 of the Court of Appeals is **AFFIRMED** with the **MODIFICATION** that the appellant is ordered to indemnify the

---

[25] *Rollo*, pp. 12-13.

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

[27] *People v. Enrile Donio*, *supra* note 13.

private complainant Jacqueline Langaman the amount of ₱75,000.00 instead of ₱50,000.00 as moral damages, ₱75,000.00 instead of ₱30,000.00 as exemplary damages and the amount of ₱50,000.00 instead of ₱25,000.00 as temperate damages in lieu of actual damages.

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

Carpio (Chairperson), J., on wellness leave.

SECOND DIVISION

[G.R. No. 228435. June 21, 2017]

KT CONSTRUCTION SUPPLY, INC., represented by WILLIAM GO, *petitioner, vs.* **PHILIPPINE SAVINGS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; LOAN; AN ACCELERATION CLAUSE IN A CONTRACT OF LOAN IS VALID AND PRODUCES LEGAL EFFECTS; APPLICATION IN CASE AT BAR.— It has long been settled that an acceleration clause is valid and produces legal effects. In the case at bench, the promissory note explicitly stated that default in any of the installments shall make the entire obligation due and demandable even without notice or demand. Thus, KT Construction was erroneous in saying that PSBank's complaint was premature on the ground that the loan was due only on October 12, 2011. KT Construction's entire loan obligation became due and demandable when it failed to pay an installment pursuant to the acceleration clause. Moreover, KT Construction could not evade responsibility by claiming that it had not received any demand letter for the payment of the loan. PSBank had sent a

demand letter, dated February 3, 2011, asking KT Construction to pay the remaining obligation within five (5) days from receipt of the letter. More importantly, even granting that KT Construction did not receive the demand letter, the loan still became due and demandable because the parties expressly waived the necessity of demand.

2. **ID.; ID.; CONTRACTS OF ADHESION; CONTRACTS OF ADHESION ARE NOT INVALID *PER SE* BECAUSE THE ONE WHO ADHERES TO THE CONTRACT IS FREE TO REJECT IT ENTIRELY OR GIVE HIS CONSENT TO SAID CONTRACT.—** In a further attempt to absolve itself from the loan obligation, KT Construction argued that the promissory note was null and void because it was a contract of adhesion. It may be true that KT Construction had no hand in its preparation. Still, it has been ruled in a plethora of cases that a contract of adhesion is not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.

3. **ID.; DAMAGES; ATTORNEY'S FEES; CLAIM FOR ATTORNEY'S FEES IS ALLOWED WHEN THE PAYMENT THEREOF, IN CASE OF DEFAULT, IS CATEGORICALLY PROVIDED FOR IN THE PROMISSORY NOTE.—** KT Construction also claimed that attorney's fees should not be awarded for lack of legal basis. The promissory note, however, categorically provided for the payment of attorney's fees in case of default. The said stipulation constituted a penal clause to which the parties were bound, it being part of the contract between the parties. KT Construction was mistaken in relying on Article 2208 of the Civil Code because the same applies only when there is no stipulation as to the payment of attorney's fees in case of default.

4. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ONCE THE INDEBTEDNESS HAD BEEN ESTABLISHED, THE BURDEN IS ON THE DEBTOR TO PROVE PAYMENT; CASE AT BAR.—** In *Bognot v. RRI Lending Corporation*, the Court explained that once the indebtedness had been established, the burden is on the debtor to prove payment, x x x In the case at bench, KT Construction admitted that it obtained a loan with PSBank. It, nevertheless, averred that it had been

regularly paying the loan. Thus, KT Construction could have easily provided deposit slips and other documentary evidence to prove the fact of payment. It, however, merely alleged that it religiously paid its obligation without presenting any evidence to substantiate the said obligation.

5. ID.; CIVIL PROCEDURE; ACTIONS; JURISDICTION; JURISDICTION OVER THE PERSON OF THE PARTIES MUST BE ACQUIRED SO THAT THE DECISION OF THE COURT WOULD BE BINDING UPON THEM.— In *Guy v. Gacott*, the Court ruled that a judgment binds only those who were made parties in the case, x x x In short, jurisdiction over the person of the parties must be acquired so that the decision of the court would be binding upon them. It is a fundamental rule that jurisdiction over a defendant is acquired in a civil case either through service of summons or voluntary appearance in court and submission to its authority. In the case at bench, Go and Go-Tan were neither impleaded in the civil case nor served with summons. They merely acted as representatives of KT Construction, which was impleaded as the defendant in the complaint. It is for this reason that only KT Construction filed an answer to the complaint. Thus, it is clear that the trial court never acquired jurisdiction over Go and Go-Tan.

APPEARANCES OF COUNSEL

Rogelio N. Velarde for petitioner.
Salgado Avila Gordove & Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the April 22, 2016 Decision[1] and November 23, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No.

---

[1] Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justice Mario V. Lopez and Associate Justice Ramon A. Cruz, concurring; *rollo*, pp. 30-43.

[2] *Id*. at 45-46.

103037, which affirmed with modification the June 11, 2014 Decision[3] of the Regional Trial Court, Branch 133, Makati City *(RTC)*.

On October 12, 2006, petitioner KT Construction Supply, Inc. *(KT Construction)* obtained a loan from respondent Philippine Savings Bank *(PSBank)* in the amount of ₱2.5 million. The said loan was evidenced by a Promissory Note[4] executed on the same date. The said note was signed by William K. Go *(Go)* and Nancy Go-Tan *(Go-Tan)* as Vice-President/General Manager and Secretary/Treasurer of KT Construction, respectively. In addition, both Go and Go-Tan signed the note in their personal capacities.

The promissory note stipulated that the loan was payable within a period of sixty (60) months from November 12, 2006 to October 12, 2011. In addition, the said note provided for the payment of attorney's fees in case of litigation.

On January 3, 2011, PSBank sent a demand letter to KT Construction asking the latter to pay its outstanding obligation in the amount of ₱725,438.81, excluding interest, penalties, legal fees, and other charges. For its failure to pay despite demand, PSBank filed a complaint for sum of money against KT Construction.

The RTC Ruling

In its June 11, 2014 Decision, the RTC ruled in favor of PSBank. It opined that the promissory note expressly declared that the entire obligation shall immediately become due and payable upon default in payment of any installment. The trial court, nevertheless, reduced the interest rate and stipulated interest fees for being unconscionable. Thus, it declared KT Construction, Go and Go-Tan solidary liable and it ordered them to pay PSBank the loan in the amount of ₱725,438.81 subject to twelve percent (12%) interest *per annum* and ₱50,000.00 as attorney's fees. The *fallo* reads:

---

[3] Penned by Presiding Judge Elpidio R. Calis; *id*. at 98-102.

[4] *Id*. at 72.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Philippine Savings Bank and against the defendant KT Construction Supply, Inc., represented by William Go and Nancy Go Tan, ordering the defendant to pay the plaintiff, jointly and severally, the following:

1) The amount of Seven Hundred Twenty Five Thousand Four Hundred Thirty Eight Pesos and 81/100 (Php725,438.81) plus twelve percent (12%) interest per annum from January 13, 2011 until fully paid.

2) Php50,000.00 as and for attorney's fees.

SO ORDERED.[5]

Aggrieved, KT Construction appealed before the CA.

The CA Ruling

In its April 22, 2016 Decision, the CA affirmed the RTC decision. It explained that due to the acceleration clause, the loan became due and demandable upon KT Construction's failure to pay an installment. In addition, the CA disagreed that the promissory note was a contract of adhesion because KT Construction was not in any way compelled to accept the terms of the promissory note.

The CA held that the trial court rightfully awarded attorney's fees as the same was stipulated in the promissory note. It stated that the award of attorney's fees was in the nature of a penal clause, which was valid and binding between the parties. Likewise, the CA agreed that Go and Go-Tan were solidarily liable with KT Construction for the judgment amount because, when they signed the promissory note in their personal capacities, they became co-makers thereof. It added that the parties themselves stipulated in the promissory note that their liability was solidary. The CA disposed the case in this wise:

WHEREFORE, in view of the foregoing premises, the instant appeal is DENIED. The Decision of Branch 133 of the Regional Trial Court, Makati City, National Capital Judicial Region dated June 11, 2014 in Civil Case No. 11-060, is hereby AFFIRMED with the MODIFICATION that KT Construction, represented by William K.

---

[5] *Id*. at 102.

Go and Nancy Go-Tan, is ordered to pay PS Bank the amount equivalent to 6% per *annum* of the total of the monetary awards from the finality of this Decision until full payment thereof, as legal interest. In addition, the Clerk of Court of Branch 133 of the Regional Trial Court in Makati City, or his duly authorized deputy is DIRECTED to assess and collect the additional docket fees from Philippine Savings Bank as fees in lien in accordance with Section 2, Rule 141 of the Rules of Court.

SO ORDERED.[6]

KT Construction moved for reconsideration, but its motion was denied by the CA in its November 23, 2016 resolution.

Hence, this appeal instituted by KT Construction raising the following errors:

ISSUES

I

THE COURT OF APPEALS GRAVELY AND PALPABLY ERRED, AS DID THE LOWER COURT, IN HOLDING WILLIAM GO AND NANCY GO TAN JOINTLY AND SEVERALLY LIABLE WITH THE PETITIONER TO THE RESPONDENT BANK;

II

THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN NOT FINDING THAT THE COMPLAINT IN THIS CASE WAS PREMATURELY FILED;

III

THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN FAILING TO DECLARE THE PROMISSORY NOTE IN QUESTION AS NULL AND VOID FOR BEING A CONTRACT OF ADHESION; AND

IV

THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN AWARDING ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT BANK.[7]

---

[6] *Id*. at 42-43.

[7] *Id*. at 10.

KT Construction insists that Go and Go-Tan could not be held solidarily liable for the judgment award because they were neither impleaded nor served with summons. Moreover, they did not voluntarily appear before the court. Thus, the courts never acquired jurisdiction over their persons.

KT Construction further asserts that the complaint was premature because it was not alleged that it had defaulted in paying any of the installments due and that it had received a demand letter from PSBank. It reiterates that the promissory note was null and void for being a contract of adhesion. KT Construction also argues that the award of attorney's fees was improper because it was contrary to the policy that no premium should be placed on the right to litigate.

In its Comment,[8] dated March 3, 2017, PSBank countered that Go and Go-Tan were solidarily liable with KT Construction because they signed the promissory note in favor of PSBank as officers of the corporation and in their personal capacities. It averred that the obligation was already due and demandable in view of the acceleration clause in the promissory note. Further, PSBank pointed out that the promissory note was consensual as the parties voluntarily signed the same. Finally, it claimed that attorney's fees were rightfully awarded because the same formed part of the terms and conditions of the loan agreement.

The Court's Ruling

The petition is partly meritorious.

It has long been settled that an acceleration clause is valid and produces legal effects.[9] In the case at bench, the promissory note explicitly stated that default in any of the installments shall make the entire obligation due and demandable even without notice or demand. Thus, KT Construction was erroneous in saying that PSBank's complaint was premature on the ground

---

[8] *Id*. at 151-158.

[9] *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*, 598 Phil. 827, 849 (2009).

that the loan was due only on October 12, 2011. KT Construction's entire loan obligation became due and demandable when it failed to pay an installment pursuant to the acceleration clause.

Moreover, KT Construction could not evade responsibility by claiming that it had not received any demand letter for the payment of the loan. PSBank had sent a demand letter,[10] dated February 3, 2011, asking KT Construction to pay the remaining obligation within five (5) days from receipt of the letter. More importantly, even granting that KT Construction did not receive the demand letter, the loan still became due and demandable because the parties expressly waived the necessity of demand.[11]

Further, KT Construction is mistaken that it could not be held liable for the entire loan obligation because PSBank failed to prove how many installments it had failed to pay. In *Bognot v. RRI Lending Corporation,*[12] the Court explained that once the indebtedness had been established, the burden is on the debtor to prove payment, to wit:

> Jurisprudence tells us that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.[13]

In the case at bench, KT Construction admitted that it obtained a loan with PSBank. It, nevertheless, averred that it had been regularly paying the loan. Thus, KT Construction could have easily provided deposit slips and other documentary evidence to prove the fact of payment. It, however, merely alleged that it religiously paid its obligation without presenting any evidence to substantiate the said obligation.

---

[10] *Rollo*, p. 74.

[11] *Spouses Agner v. BPI Family Savings Bank, Inc.*, 710 Phil. 82, 85-86 (2013).

[12] 736 Phil. 357 (2014).

[13] *Id*. at 367.

In a further attempt to absolve itself from the loan obligation, KT Construction argued that the promissory note was null and void because it was a contract of adhesion. It may be true that KT Construction had no hand in its preparation. Still, it has been ruled in a plethora of cases that a contract of adhesion is not invalid *per se*.[14] Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.[15]

KT Construction also claimed that attorney's fees should not be awarded for lack of legal basis. The promissory note, however, categorically provided for the payment of attorney's fees in case of default. The said stipulation constituted a penal clause to which the parties were bound, it being part of the contract between the parties.[16] KT Construction was mistaken in relying on Article 2208 of the Civil Code because the same applies only when there is no stipulation as to the payment of attorney's fees in case of default.

Only parties to the case may be bound by the court's decision

The courts *a quo*, however, erred in holding Go and Go-Tan solidarily liable for the judgment award in PSBank's favor. In *Guy v. Gacott*,[17] the Court ruled that a judgment binds only those who were made parties in the case, to wit:

> In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. The principle that

---

[14] *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 392 (2009).

[15] *Id*. at 392.

[16] *Baron Marketing Corp. v. CA*, 349 Phil. 769, 779-780 (1998).

[17] G.R. No. 206147, January 13, 2016.

a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.

In short, jurisdiction over the person of the parties must be acquired so that the decision of the court would be binding upon them. It is a fundamental rule that jurisdiction over a defendant is acquired in a civil case either through service of summons or voluntary appearance in court and submission to its authority.[18]

In the case at bench, Go and Go-Tan were neither impleaded in the civil case nor served with summons. They merely acted as representatives of KT Construction, which was impleaded as the defendant in the complaint. It is for this reason that only KT Construction filed an answer to the complaint. Thus, it is clear that the trial court never acquired jurisdiction over Go and Go-Tan.

Consequently, it was improper for the trial court to declare in its dispositive portion that Go and Go-Tan were jointly and severally liable with KT Construction for the judgment award. It is noteworthy that their liability as co-makers was never discussed in the body of the decision and that their solidary liability was a mere conclusion in the dispositive portion.

WHEREFORE, the April 22, 2016 Decision and November 23, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 103037, are **AFFIRMED with MODIFICATION,** in that, only petitioner KT Construction Supply, Inc. is bound by the judgment award.

SO ORDERED.

Peralta[*] *(Acting Chairperson)* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

Leonen, J., on leave.

---

[18] *Prudential Bank v. Magdamit, Jr.,* G.R. No. 183795, November 12, 2014, 740 SCRA 1, 13.

[*] Per Special Order No. 2445 dated June 16, 2017.

FIRST DIVISION

[A.C. No. 8371. June 28, 2017]

SPOUSES GERARDO MONTECILLO and DOMINGA SALONOY, *complainants, vs.* **ATTY. EDUARDO Z. GATCHALIAN,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); THE LAWYER AND THE CLIENT; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; A LAWYER'S NEGLIGENCE IN FULFILLING HIS DUTIES SUBJECTS HIM TO DISCIPLINARY ACTIONS.— Every lawyer is duty-bound to serve his clients with utmost diligence and competence, and never neglect a legal matter entrusted to him. A lawyer owes fidelity to the clients' cause and, accordingly is expected to exercise the required degree of diligence in handling their affairs. Consequently, he is expected to maintain at all times a high standard of legal proficiency, and to devote one's full attention, skill, and competence to the case, whether it is accepted for a fee or for free. x x x Jurisprudence provides that the lawyer's duties of competence and diligence include not merely reviewing cases or giving sound legal advice, but also consist of properly representing a client before any court or tribunal, attending scheduled hearings and conferences, preparing and filing the required pleadings, prosecuting handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him to do so. A lawyer's negligence in fulfilling these duties subjects him to disciplinary action.

2. ID.; ID.; ID.; ID.; A LAWYER HAS AN OBLIGATION TO PROMPTLY APPRISE CLIENTS REGARDING THE STATUS OF A CASE; VIOLATION IN CASE AT BAR.— The Court finds respondent liable for failing to immediately inform complainants about the trial court's adverse decision. To emphasize, a lawyer has an obligation to promptly apprise clients regarding the status of a case as expressed in Rule 18.04, Canon 18 of the CPR: x x x To be clear, a lawyer need not wait for their clients to ask for information but must advise them without delay about matters essential for them to avail of legal remedies. In the present

case, respondent failed to immediately notify complainants about the adverse decision of the trial court. Had the complainants not inquired with the trial court, they would have lost their opportunity to appeal. For this reason, respondent is also administratively liable for negligence under Rule 18.04 of the CPR.

3. ID.; ID.; ID.; ID.; LAWYER'S NEGLECT OF DUTY; IMPOSABLE PENALTY, SUSTAINED.— As regards the proper penalty, recent cases show that in similar instances where lawyers neglected their clients' affairs by failing to attend hearings and/or failing to update clients about court decisions, the Court suspended them from the practice of law for six (6) months. In *Caranza Vda. de Saldivar v. Cabanes*, a lawyer was suspended for failure to file a pre-trial brief and to attend the scheduled preliminary conference. In *Heirs of Ballesteros v. Apiag*, a lawyer was likewise suspended for not attending pre-trial, failing to inform clients about the dismissal of their case, and failing to file position papers. In *Spouses Aranda v. Elayda*, a lawyer suffered the same fate when he failed to appear in a scheduled hearing despite due notice, which resulted in the submission of the case for decision. Consistent with these cases, the Court agrees with the IBP's recommendation to suspend respondent from the practice of law for six (6) months.

APPEARANCES OF COUNSEL

Antonio C. Gorospe for complainants.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a complaint[1] filed by Spouses Gerardo Montecillo and Dominga Salonoy (complainants) against Atty. Eduardo Z. Gatchalian (respondent) before the Office of the Bar Confidant charging him of grave misconduct and gross ignorance of the law for being negligent in handling complainants' case. In a Resolution[2] dated August

[1] *Rollo*, pp. 1-6.

[2] *Id*. at 48.

9, 2010, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The Facts

Complainants engaged the legal services of respondent for an ejectment case in which they were the defendants.[3] After filing their Answer to the complaint, complainants received a notice from the court setting the preliminary conference on March 25, 2009 at 8:30 in the morning. When complainants went to respondent's office to confer with him about it, the latter told them that he did not receive the notice and that he could not attend the preliminary conference due to a conflict in his schedule. Complainants expressed that they can attend the conference even without him. He allegedly advised them not to attend anymore as he would arrange with the court for a new schedule when he is available.[4]

Complainants relied on respondent's advice and did not attend the preliminary conference anymore. Thereafter, they found out that respondent not only failed to attend the scheduled preliminary conference, but also failed to take any steps to have it cancelled or reset to another date. They also learned that, contrary to respondent's representation, he did receive the notice setting the date of the preliminary conference. Subsequently, complainant received an Order[5] dated March 25, 2009 that deemed the ejectment case submitted for decision due to complainants' failure to appear during the preliminary conference. When they approached respondent about it, he belittled the matter and told them not to worry as he would take care of it.[6]

Subsequently, the trial court issued a Decision[7] dated April 21, 2009 adverse to the complainants. Respondent received it

---

[3] The case was docketed as Civil Case No. M-PSY-09-08767 and filed before the Metropolitan Trial Court of Pasay City, Branch 45 (MeTC). *Id.* at 83-84.

[4] *Id*. at 2-3 and 84.

[5] *Id*. at 14. Signed by Judge Bibiano G. Colasito.

[6] *Id*. at 4 and 84.

[7] *Id*. at 15-18. Penned by Judge Bibiano G. Colasito.

on May 4, 2009 but failed to inform complainants about the status of the case as to enable them to prepare the next course of action. Complainants learned about the adverse ruling upon inquiring with the trial court only on May 13, 2009, or nine (9) days after respondent's receipt thereof, when their period to appeal was almost about to lapse.[8]

Complainants went to respondent's office wherein the latter prepared a Notice of Appeal. Afterwards, complainants terminated respondent's legal services and engaged another lawyer to prepare their Memorandum of Appeal. On appeal, the ejectment case was remanded to the court of origin.[9]

In sum, complainants assail respondent's negligent and complacent handling of their case.[10]

In his Comment,[11] respondent contended that when complainants informed him about the scheduled preliminary conference, he told them that he would be unable to attend due to a conflict in schedule, as he was committed to attend a criminal case hearing in Quezon City. Nevertheless, he instructed complainants to attend the preliminary conference even without his appearance and inform the court about the conflict in schedule. He denied having advised complainants not to attend the preliminary hearing and belittled the Order dated March 25, 2009. Finally, he alleged that the Order dated March 25, 2009 was complainants' fault, due to their failure to attend the preliminary conference, and upon telling this to complainants, they terminated his legal services.[12]

On June 22, 2011, while the case was pending before the IBP, complainants filed a Manifestation and Motion to Withdraw Complaint.[13]

---

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

[9] *Id*. at 66.

[10] *Id*. at 4-5 and 84-85.

[11] Dated April 19, 2010; *id*. at 52-53.

[12] *Id*. at 52-53 and 85.

[13] See *rollo*, pp. 78-78-A. See also *id*. at 83.

The IBP's Report and Recommendation

In the IBP's Report and Recommendation[14] dated August 29, 2013, the Investigating Commissioner recommended the suspension of respondent from the practice of law for six (6) months for breach of Rule 18.03 of the Code of Professional Responsibility (CPR). He explained that the submission of the ejectment case for resolution and the eventual adverse decision against complainants were attributable to respondent's negligence. Knowing that he had a conflict in schedule, respondent should have prepared and filed an appropriate motion to cause the cancellation and resetting of the scheduled preliminary conference. Whether he advised complainants to attend the preliminary conference on March 25, 2009 or not is immaterial. What was relevant was his course of action when confronted with a conflict of schedule in his court appearances.[15]

Moreover, the Investigating Commissioner found complainants' version of facts more in line with common experience as opposed to respondent's version. Notably, there was no cogent explanation why complainants would dismiss his alleged instruction to attend the conference without him.[16]

In a Resolution[17] dated August 9, 2014, the IBP Board of Governors (Board) adopted and approved the Report and Recommendation of the Investigating Commissioner.

Respondent moved for reconsideration but was denied in a Resolution[18] dated September 23, 2016.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

---

[14] *Id*. at 82-88. Penned by Commissioner Romualdo A. Din, Jr.

[15] *Id*. at 86.

[16] *Id*.

[17] See Notice of Resolution in Resolution No. XXI-2014-456 signed by IBP National Secretary Nasser A. Marohomsalic; *id*. at 81.

[18] See Notice of Resolution in Resolution No. XXII-2016-516 signed by the Secretary for the Meeting Juan Orendain P. Buted; *id*. at 97.

The Court's Ruling

The Court resolves to adopt the IBP's findings and recommendation.

Every lawyer is duty-bound to serve his clients with utmost diligence and competence, and never neglect a legal matter entrusted to him.[19] A lawyer owes fidelity to the clients' cause[20] and, accordingly is expected to exercise the required degree of diligence in handling their affairs.[21] Consequently, he is expected to maintain at all times a high standard of legal proficiency, and to devote one's full attention, skill, and competence to the case, whether it is accepted for a fee or for free.[22] The relevant provisions of the CPR read thus:

CANON 18 — A lawyer shall serve his client with competence and diligence.

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Jurisprudence provides that the lawyer's duties of competence and diligence include not merely reviewing cases or giving sound legal advice, but also consist of properly representing a client before any court or tribunal, attending scheduled hearings and conferences, preparing and filing the required pleadings, prosecuting handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him to do so.[23] A lawyer's negligence in fulfilling these duties subjects him to disciplinary action.[24]

---

[19] *The Heirs of Ballesteros, Sr. v. Apiag*, 508 Phil. 113, 125 (2005).

[20] See *Spouses Lopez v. Limos*, A.C. No. 7618, February 2, 2016; *Abiero v. Juanino*, 492 Phil. 149, 157 (2005).

[21] *Caranza Vda. de Saldivar v. Cabanes, Jr.*, 713 Phil. 530, 537 (2013).

[22] *Id.* at 537-538. Citation omitted.

[23] *Id.* at 538.

[24] *Id.*

Guided by these edicts, the Court rules that respondent failed to exercise the diligence required of lawyers in handling complainants' case. Based on the records, he failed to file the necessary motion to postpone the hearing due to a conflict in his schedule, and as a result, complainants lost their opportunity to present their evidence in the ejectment case. As complainants' counsel in the ejectment case, respondent was expected to exercise due diligence. He should have been more circumspect in preparing and filing the motion, considering the serious consequence of failure to attend the scheduled preliminary conference — *i.e.* the defendant's failure to appear thereat entitles the plaintiff to ajudgment,[25] as what happened in this case.

The Court likewise finds respondent liable for failing to immediately inform complainants about the trial court's adverse decision. To emphasize, a lawyer has an obligation to promptly apprise clients regarding the status of a case as expressed in Rule 18.04, Canon 18 of the CPR:

Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

---

[25] Section 8, Rule 70 of the Rules of Court states:

SEC. 8. *Preliminary conference; appearance of parties.* — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The provisions of Rule 18 on pre-trial shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

x x x x x x x x x

If a sole defendant shall fail to appear, the plaintiff shall likewise be entitled to judgment in accordance with the next preceding section. This procedure shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference. (Emphasis supplied)

x x x x x x x x x

See also *Caranza Vda. de Saldivar v. Cabanes*, *supra* note 21 and *Five Star Marketing Co., Inc v. Booc*, 561 Phil. 167 (2007).

To be clear, a lawyer need not wait for their clients to ask for information but must advise them without delay about matters essential for them to avail of legal remedies. In the present case, respondent failed to immediately notify complainants about the adverse decision of the trial court. Had the complainants not inquired with the trial court, they would have lost their opportunity to appeal. For this reason, respondent is also administratively liable for negligence under Rule 18.04 of the CPR.

As regards the proper penalty, recent cases show that in similar instances where lawyers neglected their clients' affairs by failing to attend hearings and/or failing to update clients about court decisions, the Court suspended them from the practice of law for six (6) months. In *Caranza Vda. de Saldivar v. Cabanes*,[26] a lawyer was suspended for failure to file a pre-trial brief and to attend the scheduled preliminary conference. In *Heirs of Ballesteros v. Apiag*,[27] a lawyer was likewise suspended for not attending pre-trial, failing to inform clients about the dismissal of their case, and failing to file position papers. In *Spouses Aranda v. Elayda*,[28] a lawyer suffered the same fate when he failed to appear in a scheduled hearing despite due notice, which resulted in the submission of the case for decision. Consistent with these cases, the Court agrees with the IBP's recommendation to suspend respondent from the practice of law for six (6) months.

WHEREFORE, respondent Atty. Eduardo Z. Gatchalian is found **GUILTY** of violating Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for six (6) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar act shall be dealt with more severely.

---

[26] *Supra* note 21.

[27] *Supra* note 19.

[28] 653 Phil. 1 (2010).

Let a copy of this Resolution be furnished to the Office of the Bar Confidant, to be attached to respondent's personal record as a member of the Bar. Furthermore, let copies of the same be served on the Integrated Bar of the Philippines and Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-15-3335. June 28, 2017]
(Formerly A.M. No. 15-04-98-RTC. June 28, 2017)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. JEROME B. BANTIYAN, Clerk of Court VI and ERLINDA G. CAMILO, former OIC/Court Interpreter, both of the Regional Trial Court, Branch 34, Banaue, Ifugao,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CIRCULAR NOS. 3-2000 AND 32-93; CIRCULARS DESIGNED TO PROMOTE FULL ACCOUNTABILITY FOR GOVERNMENT FUNDS ARE MANDATORY IN NATURE; FAILURE TO OBSERVE THESE CIRCULARS, RESULTING IN LOSS, SHORTAGE, DESTRUCTION, OR IMPAIRMENT OF COURT FUNDS AND PROPERTIES SHALL MAKE THE CLERK OF COURT OR ACCOUNTABLE OFFICER LIABLE.— Administrative Circular No. 3-2000 mandates that

all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines *(LBP)*, the authorized government depository bank. x x x Moreover, Circular No. 32-93 requires all Clerks of Court/Accountable Officers to submit to the Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. For the RTC Fiduciary Fund, the monthly report should include the original copy of report of deposits and withdrawals and validated duplicate copy of official receipts and deposit slips; and, in cases of withdrawals, a copy of the order of the court duly authenticated with the court's seal and a copy of the acknowledgment receipt. These circulars are mandatory in nature and designed to promote full accountability for government funds. Failure to observe these circulars, resulting in loss, shortage, destruction, or impairment of court funds and properties, makes the clerk of court or accountable officer liable.

2. **ID.; ID.; COURT PERSONNEL; CLERK OF COURT; HAS GENERAL SUPERVISION OVER ALL COURT PERSONNEL AND HAS THE DUTY TO SEE TO IT THAT HIS SUBORDINATES HAVE BEEN FAITHFULLY PERFORMING THEIR DUTIES IN COMPLIANCE WITH COURT CIRCULARS; CASE AT BAR.—** Atty. Bantiyan explained that his shortcomings were due to his being new to the court, lack of cooperation from the staff and heavy workload. These excuses, however, are not acceptable. Atty. Bantiyan could not hide behind the incompetence of his subordinates. For failing to keep proper records of all collections and remittances and to submit the monthly reports, he should not shift the blame to the staff in-charge. As the clerk of court, he has general supervision over all court personnel and it is his duty to see to it that his subordinates have been faithfully performing their duties and responsibilities to ensure full compliance with circulars issued by the Court. It is incumbent upon him to personally attend to the collection of the fees, the safekeeping of the money collected, the making of the proper entries thereof in the corresponding book of accounts, and the deposit of the same in the offices concerned.

3. **ID.; ID.; ID.; ID.; ID.; VIOLATION; IMPOSABLE PENALTY.—** In determining the applicable penalty, the Court had, in a number of cases, mitigated the administrative penalties

imposed on erring judicial officers and employees. In this case, considering that the shortage amounting to ₱233,958.65 was accounted for and was immediately restituted in full in November 2013, as evidenced by the deposit slips submitted by Atty. Bantiyan, and taking into account that this is his first offense, the OCA recommended that Atty. Bantiyan be meted the penalty of suspension for one (1) month. Under the circumstances, the Court believes that a fine of ₱20,000.00 would be more appropriate.

4. ID.; ID.; ID.; DELAY IN THE REMITTANCES OF COLLECTIONS CONSTITUTES NEGLECT OF DUTY; RATIONALE; IMPOSABLE PENALTY.— Time and again, the Court has stressed that safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. Camilo's failure to exercise diligence in the performance of her duty deserves administrative sanction. Delay in the remittances of collections constitutes neglect of duty on the ground that failure to remit the court collections on time deprives the court of interest that may be earned if the amounts are deposited in a bank. Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute neglect of duty for which the respondent shall be administratively liable. Under the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months, even for the first offense. Although unintentional mistake and good faith are not valid defenses, the fact that Camilo readily acknowledged her transgression, sought forgiveness and rectified her error, and considering further that this is also her first infraction, the Court finds the recommended penalty of fine in the amount of ₱10,000.00 in order.

D E C I S I O N

MENDOZA, *J.*:

This administrative case stemmed from a Financial Audit conducted by the Financial Monitoring Division *(FMD)*, Court

Management Office *(CMO)*, Office of the Court Administrator *(OAS)* on the books of accounts of the Regional Trial Court, Branch 34, Banaue, Ifugao *(RTC)*.

The audit was conducted due to the failure of Atty. Jerome B. Bantiyan *(Atty. Bantiyan)*, Clerk of Court VI, RTC, to update his financial reports in violation of Circular No. 50-95. The audit covered the period of accountability of Erlinda F. Camilo *(Camilo)*, former Officer-in-Charge-Clerk of Court from April 1, 2011 to February 9, 2012 and of Atty. Bantiyan from February 10, 2012 to November 8, 2013.

The Report[1] of the audit team disclosed that both Camilo and Atty. Bantiyan incurred shortages in the various funds of the court. An examination of the Fiduciary Fund *(FF)* revealed that Atty. Bantiyan incurred a shortage amounting to ₱211,000.00, thus, depriving the Court of unearned interest in the amount of ₱9,215.84. On the Judiciary Development Fund *(JDF)*, it was found that both Atty. Bantiyan and Camilo incurred shortages in the amounts of ₱7,140.25 and ₱580.00, respectively, due to over/under remittances. With respect to the Special Allowance for the Judiciary Fund *(SAJF)*, Atty. Bantiyan and Camilo sustained deficiencies amounting to ₱11,437.40 and ₱760.00, respectively, due to under-remittances. Lastly, on the Mediation Fund *(MF)*, Atty. Bantiyan incurred a shortage of ₱1,976.00 as a result of over and under remittances of his collections, while Camilo's shortage amounting to ₱2,000.00 was due to unremitted collections for the months of June 2011 and February 2012 amounting to ₱500.00 and ₱1,500.00, respectively.

The shortages were immediately restituted by Atty. Bantiyan and Camilo as shown by the Land Bank Deposit Slips,[2] dated November 12 and 13, 2013. The shortages incurred by Atty. Bantiyan and Camilo were summarized as follows:

---

[1] *Rollo*, pp. 5-16.

[2] *Id*. at 28-35.

Fund	Shortages	Restitutions		Balance
		Date	Amount	
Respondent Bantiyan				
FF	211,000.00	11/12/13	211,000.00	0.00
JDF	7,140.25	11/12/13	8,202.05	(1,061.80)
SAJF	11,437.40	11/12/13	5,415.97	
		11/13/13	6,021.43	0.00
MF	1,976.00	11/12/13	8,530.00	(6,554.00)
VCF	125.00	11/12/13	70.00	
		11/13/13	55.00	0.00
LRF[3]	2,280.00	11/12/13	2,350.00	(70.00)
Total	**233,958.65**		**241,644.45**	**(7,685.80)**
Respondent Camilo				
JDF	580.00	11/13/13	580.00	0.00
SAJF	760.00	11/13/13	760.00	0.00
MF	2,000.00	11/13/13	2,000.00	0.00
LRF	1,167.10	11.13.13	1,168.10	(0.90)
Total	**4,507.10**		**4,508.10**	**(0.90)[4]**

The audit team claimed that Atty. Bantiyan may have misappropriated his judiciary collections for his personal use because when the audit team required him to produce the total shortage of ₱233,958.65, he presented only the amount of ₱650.00.

The audit likewise disclosed that Camilo and Atty. Bantiyan had been remiss in the submission of the Monthly Reports and they had not been updating entries in the official cashbooks of each fund.

---

[3] Legal Research Fund.

[4] *Id*. at 479.

Further, the audit team discovered that the RTC had no collection for the Sheriff's Trust Fund *(STF)* as certified by Atty. Bantiyan, a violation of Section 10 of the Amended Administrative Circular No. 35-2004.

Thus, in a Resolution,[5] dated July 15, 2015, the Court, upon the recommendation of the OCA, ordered as follows:

1. **DOCKET** this report as a regular administrative matter against Atty. Jerome B. Bantiyan and Ms. Erlinda G. Camilo, Clerk of Court VI and former OIC/Court Interpreter, both of the RTC, Banaue, Ifugao for violation of OCA Circular No. 50-95, Circular No. 32-93, Administrative Circular No. 3-2000, OCA Circular No. 113-2004, and Amended Administrative Circular No. 35-2004;

2. **DIRECT** Atty. Jerome B. Bantiyan, Clerk of Court VI, RTC, Banaue, Ifugao to EXPLAIN the following findings:

a. Failure to present during the cash examination on 11 November 2013 the undeposited collections totaling ₱233,958.65;

b. Non-remittances and/or delayed remittances of the following judiciary collections:

Fund	Shortages
FF	211,000.00
JDF	7,140.25
SAJF	11,437.40
MF	1,976.00
VCF	125.00
LRF	2,280.00
Total	**233,958.65**

c. Non-Submission of Monthly Reports and failure to update the Official Cash Book which is a clear violation of Circular No. 32-93 and OCA Circular No. 113-2004;

---

[5] *Id*. at 43-45.

Fund	Deficient Reports
Fiduciary Fund	No reports
Judiciary Development Fund	December 2012 – October 2013
Mediation Fund	No reports

d. Failure to collect the required One Thousand Pesos (₱1,000.00) Sheriff's Trust Fund for every civil case filed in court pursuant to Section 10 of the Amended Administrative Circular No. 35-2004.

3. DIRECT Ms. Erlinda G. Camilo, former OIC/Court Interpreter, RTC, Banaue, Ifugao, to COMMENT on the following audit findings:

a. Non-remittances and/or delayed remittances of the following judiciary collections:

Fund	Shortages
JDF	580.00
SAJF	760.00
MF	2,000.00
LRF	1,167.10
Total	**4,507.10**

b. Non-submission of Monthly Reports and failure to update the Official Cash Book which is a clear violation of Circular No. 32-93 and OCA Circular No. 113-2004.

Fund	Deficient Reports
Fiduciary Fund	No reports
Mediation Fund	No reports

4. **DIRECT** Mr. Jonathan D. Nasdoma, Clerk II and designated financial accountable officer, RTC, Banaue, Ifugao to:

a. **COLLECT** the mandatory One Thousand Pesos (₱1,000.00) Sheriff's Trust Fund for every civil case filed in court pursuant to Section 10 of the Amended Administrative Circular No. 35-2004 and STRICLTY ADHERE with the procedural guidelines in the handling of the Sheriff's Trust Fund;

b. OPEN a separate account for the Sheriff's Trust Fund in line with the OCA Circular No. 99-2014 dated 31 July 2014, Re: Reduction of Initial/Opening Deposit and Maintaining Balance of Regular Savings Account from ₱10,000.00 to ₱1,000.00 for the Fiduciary and Sheriff's Trust Fund Accounts;

c. UPDATE regularly the recording of financial transactions for each fund in the official cashbooks and CERTIFY at the end of every month the correctness of entries therein; and

d. STERNLY ADHERE and FOLLOW the issuances of the Court on the proper handling and reporting of judiciary funds, particularly the prescribed period within which to remit court collections as well as the proper collections and allocations of [filing] fees; and

5. **DIRECT** Hon. Ester P. Flor to MONITOR the financial transactions of the RTC, Banaue, Ifugao, to ensure strict observance of the issuances of the Court in order to avoid any irregularity in the collections, deposits and withdrawals/disbursements of court funds.[6]

Explanation of Camilo

In a Letter,[7] dated January 15, 2016, Camilo explained that her shortages in the JDF, SAJF, MF, and Legal Research Fund *(LRF)* were due to oversight and miscalculation. She explained that she computed the collections based on the official receipts issued for the current month and collected from the issuer without reference to the previous reports; that the funds were not re-calculated because she presumed that the amounts she received were exact for deposits; and, that the LRF receipted collections were not included in the computation because she thought that the collections were less than ₱100.00.

On her failure to update the cashbook, Camillo averred that the cashbooks were not monitored because she confidently relied on Jonathan Nasdoman *(Nasdoman)* who was in charge of the entries during the time of Atty. Dennis Dimalnat. She stated that the entries in the cashbooks were completed just after the conclusion of the audit.

---

[6] *Id*. at 43-45.

[7] *Id*. at 46-56.

On the failure to submit the monthly reports, Camilo alleged that she had submitted the reports by mail to the OCA and even showed to the audit team the office files which they used as basis for comparison with the official receipts issued monthly. She attached a machine copy of the registry receipts to prove that the reports were actually mailed to the proper office.

Explanation of Atty. Bantiyan

For his part, Atty. Bantiyan narrated that when he assumed office in January 2012, the staff was uncooperative, unruly and resistant, making it hard for him to attend with dispatch to the clerical aspect of a financial accountable officer. Further, Nasdoman, who was in-charge of the financial matters, begged to be relieved of the financial responsibility because of health reasons. Thus, Atty. Bantiyan had no choice but to assume the bulk of the work as no one in the staff was willing to help. It was then that he discovered that Nasdoman was not preparing the financial reports and updating the cashbooks. According to him, he immediately instructed Camilo and Nasdoman to accomplish the reports and update the cashbooks, but they were not able to comply soon enough so he decided to update the cashbooks and draft the reports himself.

On his failure to present the undeposited collections totaling ₱233,958.65, Atty. Bantiyan denied that he misappropriated the said amount. He explained that during the audit, he readily admitted to the audit team leader that the collection was in his possession. He also informed the audit team leader that it was not his practice to keep a large amount of money in the office because the safety vault therein was being utilized to store the object evidence submitted in court and it was usually full. When the new cabinet with safety vault was delivered in 2012, the key attached on its top was missing. Atty. Bantiyan further explained that he was not able to get the money from Lagawe and present it to the audit team leader because he could not leave the office as he was busy attending to the audit team. He averred that he no longer brought the money to the court the following day as he opted to deposit the same with the Land Bank of the Philippines *(LBP)* and he just presented the deposit slips to the audit team.

Atty. Bantiyan asserted that daily deposit with the bank was not possible because the court was understaffed; that the LBP-Lagawe branch was an hour away; and that it usually took thirty (30) minutes to one (1) hour of waiting before a public utility vehicle would be available. He added that the Lagawe-Banaue road was not safe due to the incidents of highway robberies, and, in fact, the municipal treasurer of Banaue was robbed of ₱800,00.00 while on his way to the court to pay the salaries of the LGU staff. Thus, he devised a way to keep the money safe until it was deposited in the LBP.

On the failure to collect the ₱1,000.00 STF, Atty. Bantiyan averred that he was made aware of it only during the Orientation Seminar for Clerks of Court; and that when he assumed office in January 2012, there was no record of such STF being collected because the court was created only in 1995. He said that when he found out about the STF, he talked to the Presiding Judge, but he was told that the court did not have the required amount of ₱10,000.00 to open a STF account and that he could not use the other funds of the court for that purpose. Nonetheless, when the initial deposit to open a STF account was reduced to ₱1,000.00, the court immediately opened a STF account and transferred the STF collections from the FF account.

Atty. Bantiyan explained that he encountered difficulties in preparing the financial reports because he was new to the court and he had been discharging most of the work. He further averred that the situation was aggravated by the lack of cooperation from the staff. Atty. Bantiyan offered his apology and promised to be more committed to his work.[8]

The OCA Recommendation

In a Memorandum,[9] dated October 24, 2016, the OCA found Camilo guilty of simple neglect of duty and recommended that she be fined in the amount of ₱10,000.00. With respect to Atty. Bantiyan, the OCA found him guilty of gross neglect of duty

---

[8] *Id*. at 293-304.

[9] *Id*. at 476-490.

but recommended that the penalty be reduced to one (1) month suspension, considering that he immediately restituted the shortages and that it was his first offense.

The Court's Ruling

Liability of Atty. Bantiyan

Without a quibble, Atty. Bantiyan failed to perform with utmost diligence his financial and administrative responsibilities. Records show that he was remiss in his duties of depositing the court collections on time, updating the entries in the official cashbooks, and regularly submitting his monthly reports.

Administrative Circular No. 3-2000 mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines *(LBP)*, the authorized government depository bank. The Circular provides:

II. PROCEDURAL GUIDELINES

A. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures. –

x x x x x x x x x

(c) In the RTC, MeTC, MTCC, MTC. MCTC, SDC and SCC.- The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila - SAVINGS ACCOUNT No. 0591-0116-34 **or if depositing daily is not possible, deposits for the Fund shall be at the end of every month,** provided, however, that whenever collections for the Fund reach ₱500.00, the same shall, be deposited immediately even before the period above-indicated.

A separate set of official receipts shall be used for the collections for the Fund. The official receipt issued for the Fund shall invariably indicate the prefix initial of the name of the Fund, "JDF", followed immediately by the description of the kind and nature of the collection. Official receipts for the Fund shall be provided by the Supreme Court.

Collections shall not be used for encashment of personal checks, salary checks, etc., Only Cash, Cashier's Check and Manager's Check are acceptable as payments.

Cash Book for the Judiciary Development Fund can be requisitioned from the Property Division, Office of the Court Administrator.

(d) Rendition of Monthly Report.- Separate "Monthly Report of Collections and Deposits" shall be regularly prepared for the Judiciary Development Fund which shall be submitted to the Chief Accountant, FMO OCA copy furnished the FMBO Supreme Court, the Fiscal Monitoring Division within ten [10] days after the end of every month. Duplicate copies of the official receipts issued during such month covered and validated copy of the Deposit Slips, should likewise be submitted. Deposit slips that are not machine validated shall not be considered as deposits.

The aggregate total of the Deposit Slips for any particular month should always be equal to and tally with the total collections for that month as reflected in the Monthly Report of Collections and Deposits, and Cash Book.

x x x x x x x x x

B. General Fund (GF)

(1) Duty of the Clerks of Court, Officer-in-Charge or Accountable Officers.— The Clerks of Court, Officers-in-Charge of the office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the General fund collections, issue the proper receipt therefor, **maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT's GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund**.

(2) Depository Bank of the GF.— The amounts accruing to the Fund shall be deposited for the account of the General Fund, Bureau of Treasury by the Clerks of Court, Officers-in-Charge of the office of the Clerk of Court in an authorized government depository bank. For this purpose, the depository bank for the GF shall be the LAND BANK OF THE PHILIPPINES (LBP) or its branches. In the absence of a LBP Branch, Postal Money Orders (PMOs) payable to the Chief Accountant, SC (OCA) can be purchased from the Local Post Office

and sent to the Chief Accountant, SC (OCA) for deposit to the Bureau of Treasury. [Emphases supplied]

Moreover, Circular No. 32-93 requires all Clerks of Court/ Accountable Officers to submit to the Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. For the RTC Fiduciary Fund, the monthly report should include the original copy of report of deposits and withdrawals and validated duplicate copy of official receipts and deposit slips; and, in cases of withdrawals, a copy of the order of the court duly authenticated with the court's seal and a copy of the acknowledgment receipt.

These circulars are mandatory in nature and designed to promote full accountability for government funds. Failure to observe these circulars, resulting in loss, shortage, destruction, or impairment of court funds and properties, makes the clerk of court or accountable officer liable.[10]

In the case at bench, Atty. Bantiyan readily admitted his failure to deposit the court collections on time and offered several excuses for his omission among which are the safety of the personnel and the distance of the court from the bank which is located in Lagawe. Nevertheless, his mandate was clear. He is not allowed to keep funds in his custody as the same should be immediately deposited in the nearest LBP branch. In case daily deposits of cash collections are not possible, the deposit shall be made at the end of every month. But if the collection exceeds ₱500.00, the deposit shall be made immediately. Notwithstanding the guidelines, Atty. Bantiyan failed to make the necessary deposit for the fiduciary fund for the months of February, April, August, and September 2013, which amounted to ₱15,000.00, ₱26,000.00, ₱90,000.00, and ₱80,000.00, respectively. If there was indeed a problem with the transportation, the matter should have been brought to the attention of the court.[11] Moreover, if

---

[10] *Office of the Court Administrator v. Caballer*, 627 Phil. 648, 665-666 (2010).

[11] *Report on the Financial Audit in RTC, General Santos City; and the RTC & MTC of Polomolok, South Cotabato,* 338 Phil. 13, 22 (1997).

Atty. Bantiyan was truly scared to make the daily deposit on account of distance and safety issues, why did he keep the money in his house in Lagawe, the same place where the LBP was located.

Atty. Bantiyan was equally remiss in the keeping of the official cashbooks and in his obligation to send the required reports of deposits and withdrawals to the OCA. From the time he assumed office in January 2012, the audit team discovered that the official cashbooks had not been updated and that Atty. Bantiyan failed to submit a single report to the OCA.

Atty. Bantiyan explained that his shortcomings were due to his being new to the court, lack of cooperation from the staff and heavy workload. These excuses, however, are not acceptable. Atty. Bantiyan could not hide behind the incompetence of his subordinates. For failing to keep proper records of all collections and remittances and to submit the monthly reports, he should not shift the blame to the staff in-charge. As the clerk of court, he has general supervision over all court personnel and it is his duty to see to it that his subordinates have been faithfully performing their duties and responsibilities to ensure full compliance with circulars issued by the Court.[12] It is incumbent upon him to personally attend to the collection of the fees, the safekeeping of the money collected, the making of the proper entries thereof in the corresponding book of accounts, and the deposit of the same in the offices concerned.[13] In the case of *OCA v. Bernardino*,[14] the Court held:

> Again, we state that good faith and lack of malice are not excuses for failure to comply with the mandatory provisions of circulars regarding the remittances of court funds.
>
> Unfamiliarity with procedures because he is new to the job will likewise not exempt respondent from liability. As a Clerk of Court,

---

[12] *Re: Report on the Judicial and Financial Audit of RTC-BR. 4, Panabo, Davao Del Norte*, 351 Phil. 1, 20 (1998).

[13] *Office of the Court Administrator v. Bernardino*, 490 Phil. 500, 529 (2005).

[14] *Id*. at 500.

she is expected to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to her office. Being new to her job, she should have been more diligent in the performance of her duties.[15]

Evidently, Atty. Bantiyan failed to perform his duties with the degree of diligence and competence expected of him. His apparent good faith, his admission of the infractions and immediate restitution of the cash shortages, though mitigating, cannot exculpate him from liability. The Court has to enforce what is mandated by the law and to impose a reasonable punishment for violations thereof.[16]

In determining the applicable penalty, the Court had, in a number of cases, mitigated the administrative penalties imposed on erring judicial officers and employees.[17] In this case, considering that the shortage amounting to ₱233,958.65 was accounted for and was immediately restituted in full in November 2013, as evidenced by the deposit slips submitted by Atty. Bantiyan, and taking into account that this is his first offense, the OCA recommended that Atty. Bantiyan be meted the penalty of suspension for one (1) month. Under the circumstances, the Court believes that a fine of ₱20,000.00 would be more appropriate.

Liability of Camilo

As for Camilo, the OCA's recommendation is well-taken.

Camilo failed to monitor the entries in the official cashbooks because she relied heavily on Nadosman who was assigned by the Presiding Judge to perform such duty since the tenure of the former Clerk of Court. Though the updating of the court's cashbooks was delegated to Nasdoman, it was her responsibility, being the OIC-Clerk of Court, to oversee the work of her subordinate. As the court's administrative officer, Camilo must

---

[15] *Id.* at 525-526.

[16] *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan*, 465 Phil. 24, 37 (2004).

[17] *Id.* at 38.

ensure that her subordinates are performing their tasks properly, promptly and efficiently.

Camilo likewise incurred shortages in the various funds of the court amounting ₱4,407.10 as a result of over-remittances and delayed remittances. These shortages, as found by the OCA, were the results of an honest mistake in the computation of collections and were all accounted for in the Court's financial records. Time and again, the Court has stressed that safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[18] Camilo's failure to exercise diligence in the performance of her duty deserves administrative sanction.

Delay in the remittances of collections constitutes neglect of duty on the ground that failure to remit the court collections on time deprives the court of interest that may be earned if the amounts are deposited in a bank.[19] Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute neglect of duty for which the respondent shall be administratively liable.[20] Under the Uniform Rules on Administrative Cases in the Civil Service,[21] simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months, even for the first offense.

Although unintentional mistake and good faith are not valid defenses, the fact that Camilo readily acknowledged her transgression, sought forgiveness and rectified her error, and considering further that this is also her first infraction, the Court finds the recommended penalty of fine in the amount of ₱10,000.00 in order.

---

[18] *Office of the Court Administrator v. Nini*,685 Phil. 340, 349 (2012).

[19] *In-House Financial Audit conducted in the books of accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao Del Sur*, 578 Phil. 387, 392-393 (2008).

[20] *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido, Former Clerk of Court of Municipal Circuit Trial Court, Victoria-La Paz, Tarlac*, 518 Phil. 1, 6 (2006).

[21] Civil Service Commission Memorandum Circular No. 19-99.

WHEREFORE, the Court resolves to declare Atty. Jerome B. Bantiyan, Clerk of Court VI, Regional Trial Court, Branch 34, Banaue, Ifugao, **GUILTY** of Gross Neglect of Duty for which he is **FINED** in the amount of Twenty Thousand Pesos (₱20,000,00), with a **WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

Respondent Erlinda G. Camilo, former Officer-in-Charge/ Court Interpreter, Regional Trial Court, Branch 34, Banaue, Ifugao, is found **GUILTY** of Neglect of Duty and **FINED** in the amount of Ten Thousand Pesos (₱10,000.00) and **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Leonen,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

SECOND DIVISION

[A.M. No. P-16-3604. June 28, 2017]
(Formerly OCA I.P.I. No. 14-4245-P. June 28, 2017)

HEIRS OF DAMASO OCHEA, represented by MIGUEL KILANTANG, *petitioner, vs.* **ATTY. ANDREA P. MARATAS, Branch Clerk of Court, Branch 53, Regional Trial Court, Lapu-Lapu City, Cebu,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SIMPLE NEGLECT OF DUTY; DEFINED;

---

[*] Per Special Order No. 2445 dated June 16, 2017.

CLASSIFIED AS A LESS GRAVE OFFENSE WHICH IS PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE, AND DISMISSAL FROM THE SERVICE FOR THE SECOND OFFENSE.— The Court finds no compelling reason to deviate from the findings and recommendation of the OCA that Atty. Maratas is liable for Simple Neglect of Duty. Neglect of duty is the failure of an employee to give one's attention to a task assigned to him. Gross neglect is such neglect which, depending on the gravity of the offense or the frequency of commission, becomes so serious in its character as to endanger or threaten the public welfare. The term does not necessarily include willful neglect or intentional official wrongdoing. Simple neglect of duty, on the other hand, has been defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference. It is classified as a less grave offense which is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

2. ID.; ID.; ID.; BRANCH CLERK OF COURT; DUTIES THEREOF.— [W]hile Atty. Maratas submitted several documents reflecting Civil Case No. 2936-L in the alleged list of cases submitted to then Assisting Judge Trinidad for decision, none of which would prove that she indeed properly indorsed said cases so the assisting judge could take the appropriate action. Neither was there any evidence showing that Atty. Maratas actually made a proper turnover of those cases which had been submitted for decision before Judge Cobarde's compulsory retirement. Moreover, upon investigation, it was found that Atty. Maratas failed to present the court's complete monthly reports for the fourteen (14) years following the time when Civil Case No. 2936-L had been submitted for decision. As the Branch Clerk of Court, it is the responsibility of Atty. Maratas to take the necessary steps to ensure that cases are acted upon by the judge. She should keep a daily record of the trial court's activities in a Court Journal, wherein entries of cases tried and heard, as well as their status, shall be made daily. She should likewise prepare the calendar of the cases submitted for decision to be given to the Presiding Judge, noting the exact day, month, and year when the ninety (90)-day period for deciding a case is to expire.

3. ID.; ID.; ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; SINCE THE IMAGE OF THE COURTS AS

THE ADMINISTRATORS AND DISPENSERS OF JUSTICE IS NOT ONLY REFLECTED IN THEIR DECISIONS, RESOLUTIONS, OR ORDERS, BUT ALSO MIRRORED IN THE CONDUCT OF THEIR COURT STAFF, IT IS INCUMBENT, UPON EVERY COURT PERSONNEL TO OBSERVE THE HIGHEST DEGREE OF EFFICIENCY AND COMPETENCY IN HIS OR HER ASSIGNED TASKS.— Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and with diligence at all times. Since the image of the courts as the administrators and dispensers of justice is not only reflected in their decisions, resolutions, or orders, but also mirrored in the conduct of their court staff, it is incumbent, upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. Failure to meet these standards warrants the imposition of administrative sanctions.

4. ID.; ID.; ID.; ID.; RESPONDENT FOUND LIABLE FOR SIMPLE NEGLECT OF DUTY; PENALTY OF FINE, IMPOSED.— Atty. Maratas' failure to do her duties as a clerk of court contributed to the undue delay in the resolution of Civil Case No. 2936-L which already reached sixteen (16) years. Indubitably, she should be held liable for Simple Neglect of Duty. However, since this is Atty. Maratas' first administrative offense, and taking into consideration her length of service in the Judiciary, a fine, instead of suspension, will suffice as an appropriate penalty.

D E C I S I O N

PERALTA, *J.*:

This is a Complaint which Miguel Kilantang filed against Atty. Andrea P. Maratas, Branch Clerk of Court, Regional Trial Court (*RTC*) of Lapu-Lapu City, Cebu, Branch 53, for unreasonable neglect of duty, nonfeasance, and failure to perform her mandated duty.

The factual antecedents of the case are as follows:

Kilantang stated that he represented the plaintiffs in the case of *Heirs of Damaso Ochea, et al. v. Leoncia Dimay, et al.*,

Civil Case No. 2936-L, which was raffled to then Presiding Judge Benedicto Cobarde. In the RTC Order dated August 4, 1997, the trial court ordered the parties to submit their respective memoranda within thirty (30) days, after which the case shall be deemed submitted for decision. However, Judge Cobarde failed to render a decision despite the plaintiffs' several motions to render judgment. Kilantang claimed that the plaintiffs even made personal follow-ups with Atty. Maratas, inquiring if the trial court had acted on their motions to render judgment since the defendants had already acknowledged plaintiffs' ownership over the disputed property by way of paying the monthly rentals. Atty. Maratas assured them that Judge Cobarde would decide the case before his retirement from the service since he had already prepared a draft decision. Yet, despite the Court's directive for Judge Cobarde to comply and even after his compulsory retirement on December 20, 2010, Civil Case No. 2936-L remained undecided. Kilantang alleged that the failure of Atty. Maratas to indorse the records of the case or to at least apprise Judge Mario O. Trinidad, then designated assisting judge, regarding the pendency of said case, further contributed to the delay.

Atty. Maratas vehemently denied the accusations against her. She asserted that their legal researcher had prepared a draft decision which had already been submitted to Judge Cobarde. When she talked to the plaintiffs about the status of their case, it was based on her personal belief that Judge Cobarde would act on it before his retirement. She averred that she, likewise, indorsed the case to Judge Trinidad, evidenced by the trial court's monthly reports for September to December 2011 and for February, March, May, and June 2012. She extended her apologies to the plaintiffs for the undue delay in the disposition of their case, but maintained that the same could not be attributed to her because she was never remiss in the performance of her duties.

After a careful study and review of the case, the Office of the Court Administrator (*OCA*), on August 22, 2016, found Atty. Maratas guilty of Simple Neglect of Duty and recommended that she be fined the amount of ₱5,000.00, with a stern warning

that a repetition of the same or any similar infraction shall be dealt with more severely.[1]

The Court's Ruling

The Court finds no compelling reason to deviate from the findings and recommendation of the OCA that Atty. Maratas is liable for Simple Neglect of Duty.

Neglect of duty is the failure of an employee to give one's attention to a task assigned to him. Gross neglect is such neglect which, depending on the gravity of the offense or the frequency of commission, becomes so serious in its character as to endanger or threaten the public welfare. The term does not necessarily include willful neglect or intentional official wrongdoing.[2] Simple neglect of duty,[3] on the other hand, has been defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[4] It is classified as a less grave offense which is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.

Here, while Atty. Maratas submitted several documents reflecting Civil Case No. 2936-L in the alleged list of cases submitted to then Assisting Judge Trinidad for decision, none of which would prove that she indeed properly indorsed said cases so the assisting judge could take the appropriate action. Neither was there any evidence showing that Atty. Maratas actually made a proper turnover of those cases which had been submitted for decision before Judge Cobarde's compulsory retirement.

Moreover, upon investigation, it was found that Atty. Maratas failed to present the court's complete monthly reports for the fourteen (14) years following the time when Civil Case No.

---

[1] *Rollo*, pp. 27-31.

[2] *Clemente v. Bautista*, 710 Phil. 10, 17 (2013).

[3] Rule 10, Section 46(D)(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service.

[4] *Angat v. GSIS*, G.R. No. 204738, July 29, 2015, 764 SCRA 285, 301.

2936-L had been submitted for decision. As the Branch Clerk of Court, it is the responsibility of Atty. Maratas to take the necessary steps to ensure that cases are acted upon by the judge. She should keep a daily record of the trial court's activities in a Court Journal, wherein entries of cases tried and heard, as well as their status, shall be made daily. She should likewise prepare the calendar of the cases submitted for decision to be given to the Presiding Judge, noting the exact day, month, and year when the ninety (90)-day period for deciding a case is to expire.

Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and with diligence at all times. Since the image of the courts as the administrators and dispensers of justice is not only reflected in their decisions, resolutions, or orders, but also mirrored in the conduct of their court staff, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. Failure to meet these standards warrants the imposition of administrative sanctions.[5]

Atty. Maratas' failure to do her duties as a clerk of court contributed to the undue delay in the resolution of Civil Case No. 2936-L which already reached sixteen (16) years. Indubitably, she should be held liable for Simple Neglect of Duty. However, since this is Atty. Maratas' first administrative offense, and taking into consideration her length of service in the Judiciary, a fine, instead of suspension, will suffice as an appropriate penalty.

WHEREFORE, PREMISES CONSIDERED, the Court finds Andrea P. Maratas, Branch Clerk of Court, Regional Trial Court of Lapu-Lapu City, Cebu, Branch 53, **GUILTY** of Simple Neglect of Duty and **ORDERS** her to pay the **FINE** in the amount of ₱5,000.00, with a **STERN WARNING** that a repetition of the same or any similar infraction shall be dealt with more severely by the Court.

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

Carpio (Chairperson), J., on wellness leave.

---

[5] *OCA v. Atty. Gaspar*, 659 Phil. 437, 442 (2011).

SECOND DIVISION

[G.R. No. 176703. June 28, 2017]

MUNICIPALITY OF CAINTA, *petitioner, vs.* **CITY OF PASIG AND UNIWIDE SALES WAREHOUSE CLUB, INC.,** *respondents.*

[G.R. No. 176721. June 28, 2017]

UNIWIDE SALES WAREHOUSE CLUB, INC., *petitioner, vs.* **CITY OF PASIG and MUNICIPALITY OF CAINTA,** *respondents.*

SYLLABUS

1. TAXATION; LOCAL GOVERNMENT CODE; *SITUS* OF TAXATION; LOCAL BUSINESS TAXES AND REALTY TAXES ARE TO BE COLLECTED BY THE LOCAL GOVERNMENT UNIT WHERE THE BUSINESS IS CONDUCTED OR THE REAL PROPERTY IS LOCATED. — Under the Local Government Code (*LGC*), local business taxes are payable for every separate or distinct establishment or place where business subject to the tax is conducted, which must be paid by the person conducting the same. Section 150 therein provides the *situs* of taxation, x x x For real property taxes, Presidential Decree (PD) 464 or the Real Property Tax Code provides that collection is vested in the locality where the property is situated, x x x This is affirmed by Sections 201 and 247 of the LGC, *viz.*: Sec. 201. *Appraisal of Real Property.* All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing **in the locality where the property is situated**. x x x Sec. 247. *Collection of Tax.* — x x x shall be the **responsibility of the city or municipal treasurer concerned**. x x x [I]t is clear that local business taxes and realty taxes are to be collected by the local government unit where the business is conducted or the real property is located.

2. ID.; ID.; ID.; REALTY TAX; THE COURT HELD THAT THE LOCATION STATED IN THE CERTIFICATE OF TITLE SHOULD BE FOLLOWED UNTIL AMENDED

THROUGH PROPER JUDICIAL PROCEEDINGS; RATIONALE.— This Court holds that the location stated in the certificate of title should be followed until amended through proper judicial proceedings. PD 1529, or the Property Registration Decree *(PRD)*, is an update of the Land Registration Act (Act 496) and relates to the registration of real property. Section 31 thereof provides that a decree of registration, once issued, binds the land and quiets title thereto, and it is conclusive upon and against all persons, including the National Government and all branches thereof. x x x The same section requires every decree of registration to contain a description of the land, as finally determined by the court. Such final determination is obtained by requiring the applicant to file a sworn application containing, among others, a description of the land sought to be registered, together with all original muniments of title or copies thereof and a survey plan of the land approved by the Bureau of Lands. The import of these provisions is that the land registration court, in confirming the applicant's title, necessarily passes upon the technical description of the land and consequently its location, based on proof submitted by the applicant and reports by the Commissioner of Land Registration and Director of Lands. There is thus basis to presume correct the location stated in the Certificate of Title and to rely thereon for purposes of determining the *situs* of local taxation, until it is cancelled or amended.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING, WHEN PRESENT; ELEMENTS.— There was no *litis pendentia* or forum shopping as would justify the dismissal of the tax collection case. The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to res judicata in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

4. TAXATION; LOCAL GOVERNMENT CODE; BUSINESS TAXES; THE LAW PROVIDES THAT THE TAX ON A

BUSINESS MUST BE PAID BY THE PERSON CONDUCTING THE SAME.— There is also no merit to Uniwide's contention that Pasig should directly recover from Cainta the tax payments under consideration, as a matter of expediting and inexpensively settling the tax liabilities. Section 146 of the LGC expressly provides that the tax on a business must be paid by the person conducting the same, x x x It is undisputed that Uniwide is the person conducting the business under consideration. Thus, it is the person against whom Pasig may properly pursue for payment of local business taxes.

5. **CIVIL LAW; HUMAN RELATIONS; PRINCIPLE AGAINST UNJUST ENRICHMENT; TWO CONDITIONS REQUIRED; PRESENT IN CASE AT BAR.—** Cainta, on the other hand, is obligated to return the taxes erroneously paid to it by Uniwide pursuant to the principle against unjust enrichment. The principle of unjust enrichment has two conditions. First, a person must have been benefited without a real or valid basis or justification. Second, the benefit was derived at another person's expense or damage. As previously discussed, prior to final adjudication by the RTC–Antipolo on the boundary dispute case and necessary amendment to the TCTs, Cainta has no apparent right to collect the taxes on the subject properties. Thus, when Uniwide paid taxes to it, Cainta was benefited without real or valid basis, which benefit was derived at the expense of both Uniwide and Pasig.

6. **ID.; DAMAGES; ATTORNEY'S FEES; AS THE AWARD OF ATTORNEY'S FEES IS THE EXCEPTION RATHER THAN THE GENERAL RULE, IT IS NECESSARY FOR THE TRIAL COURT TO MAKE FINDINGS OF FACT AND LAW THAT WOULD BRING THE CASE WITHIN THE EXCEPTION AND JUSTIFY THE GRANT OF SUCH AWARD.—** The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of fact and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted.

APPEARANCES OF COUNSEL

Balgos & Perez for Uniwide Sales Warehouse Club, Inc.

D E C I S I O N

MARTIRES, *J.*:

These are two consolidated petitions for review on certiorari, assailing the 12 July 2006 decision[1] and the 14 February 2007 resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 81806, which affirmed with modification the 30 June 2003 decision[3] of the Regional Trial Court, Branch 267, Pasig City (*RTC–Pasig*) in Civil Case No. 66082 filed by the City, then Municipality, of Pasig (*Pasig*) against Uniwide Sales Warehouse Club Inc. (*Uniwide*) for collection of taxes. The petition docketed as G.R. No. 176703[4] was filed by the Municipality of Cainta *(Cainta)* while the petition docketed as G.R. No. 176721[5] was filed by Uniwide.

THE FACTS

Petitioner Uniwide conducted and operated business in buildings and establishments constructed on parcels of land covered by Transfer Certificate of Title (*TCT*) Nos. 72983, 74003, and PT-74468 *(subject properties)* issued by the Registry of Deeds of Pasig City. In said TCTs, the location of the parcels of land is indicated as being in Pasig.[6]

---

[1] *Rollo* (G.R. No. 176721), pp. 62-82; Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Fernanda Lampas Peralta and Myrna Dimaranan-Vidal.

[2] *Id*. at 32; Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Martin S. Villarama, Jr. and Associate Justice Myrna Dimaranan-Vidal.

[3] *Id*. at 128-138.

[4] *Rollo* (G.R. No. 176703), pp. 22-61.

[5] *Rollo* (G.R. No. 176721), pp. 36-59.

[6] Records, Vol. II, pp. 1108-1113.

In 1989, Uniwide applied for and was issued a building permit by Pasig for its building. Uniwide also secured the requisite Mayor's Permit for its business from Pasig and consequently paid thereto its business and realty taxes, fees, and other charges from 1989 to 1996.

However, beginning 1997, Uniwide did not file any application for renewal of its Mayor's Permit in Pasig nor paid the local taxes thereto. Instead, it paid local taxes to Cainta after the latter gave it notice, supported by documentary proof of its claims, that the subject properties were within Cainta's territorial jurisdiction.

Consequently, Pasig filed a case for collection of local business taxes, fees, and other legal charges due for fiscal year 1997 against Uniwide with the RTC–Pasig on 28 January 1997. Uniwide, in turn, filed a third-party complaint against Cainta for reimbursement of the taxes, fees, and other charges it had paid to the latter in the event that Uniwide was adjudged liable for payment of taxes to Pasig.

On 6 May 1999, Uniwide sold the subject properties to Robinsons Land Corporation.

Prior to the institution of said tax collection case, Cainta had filed a petition for the settlement of its boundary dispute with Pasig on 30 January 1994, before RTC, Branch 74, Antipolo City (*RTC–Antipolo*), entitled *Municipality of Cainta v. Municipality of Pasig*, docketed as Civil Case No. 94-3006. Among the territories disputed in the aforesaid case are the subject properties.

In the course of the trial of the tax collection case, Cainta filed a Motion to Dismiss or Suspend Proceedings on the ground of *litis pendentia* on 6 November 2001, in view of the pending petition for settlement of the land boundary dispute with Pasig. On 22 January 2002, the RTC–Pasig denied said motion. Cainta moved for reconsideration, but the same was denied in an order dated 7 March 2002.

Thereafter, Cainta filed a petition for certiorari with the CA, docketed as CA-G.R. SP No. 70408, with prayer for issuance of a temporary restraining order *(TRO)* or a writ of preliminary injunction. No TRO or writ of preliminary injunction was issued

by the CA, and on 30 September 2004, the CA dismissed Cainta's petition.

The RTC Ruling

In its decision dated 30 June 2003, the RTC–Pasig ruled in favor of Pasig. It upheld the indefeasibility of the Torrens title held by Uniwide over the subject properties, whose TCTs indicate that the parcels of land described therein are located within the territorial limits of Pasig. The RTC–Pasig ruled that the location indicated in the TCTs is conclusive for purposes of the action for tax collection, and that any other evidence of location would constitute a collateral attack on a Torrens title proscribed by law. It thus held that Pasig has the right to collect, administer, and appraise business taxes, real estate taxes, and other fees and charges from 1997 up to the present. It ordered Uniwide to pay Pasig local taxes and fees and real estate taxes beginning 1997, as well as attorney's fees in the amount of ₱500,000.00 plus costs of suit.

Anent the third-party complaint filed by Uniwide against Cainta, RTC–Pasig rendered judgment in favor of Uniwide. It found that Uniwide paid business and real estate taxes and other fees due beginning 1997 upon the parcels of land covered by the subject TCTs to Cainta instead of Pasig. The RTC–Pasig thus directed Cainta to return these amounts to Uniwide pursuant to the principle against unjust enrichment under Articles 2154 and 2155 of the Civil Code, as well as attorney's fees and costs of suit.

The *fallo* reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of plaintiff City of Pasig, ordering the defendant Uniwide Sales Warehouse Club, Inc. to pay the former the following:

(1) The local taxes and fees and real estate taxes beginning the year 1997 up to present; and
(2) Attorney's fees in the amount of ₱500,000.00 plus the costs of suit.

Anent the third-party complaint, judgment is hereby rendered in favor of third-party plaintiff Uniwide Sales Club Warehouse Club, Inc., ordering third-party defendant Municipality of Cainta the following:

(1) To reimburse Uniwide Sales Club Warehouse Club, Inc. the amount it paid to the Municipality as real estate taxes for the years 1997 to present plus legal interest thereon until fully paid;
(2) Attorney's fees in the amount of ₱500,000.00 and the costs of suit.[7]

On 6 August 2003, Uniwide filed a motion for partial reconsideration of the decision. On 12 August 2003, Cainta also filed a motion for reconsideration. On 30 October 2003, RTC–Pasig issued an omnibus order denying both motions.

Aggrieved, Cainta and Uniwide elevated their respective appeals before the CA.

The CA Ruling

In its assailed decision dated 12 July 2006, the CA affirmed the ruling of the RTC-Pasig with modification as to the award of attorney's fees. The dispositive portion reads:

> WHEREFORE, premises considered, the appealed Decision is **MODIFIED**, in that the award of attorney's fees against defendant-third party plaintiff Uniwide in favor of plaintiff City of Pasig is reduced to ₱100,000.00, while the award of attorney's fees against third party defendant Municipality of Cainta in favor of defendant third-party plaintiff Uniwide is likewise reduced to ₱100,000.00. All other Orders are **AFFIRMED**.[8]

Uniwide and Cainta filed their motion for partial reconsideration and motion for reconsideration, respectively, of the decision. These were denied by the CA in its resolution dated 14 February 2007.

The present petitions

In praying for the reversal of the 12 July 2006 decision of the CA, Cainta assigned the following errors in its petition:

---

[7] *Rollo* (G.R. No. 176721), p. 138.

[8] *Id.* at 30.

ASSIGNMENT OF ERRORS

I.

THE COURT A *QUO* ERRED WHEN IT REFUSED TO HOLD IN ABEYANCE THE PROCEEDINGS IN THIS CASE PENDING RESOLUTION OF THE PETITION FOR CERTIORARI BY THE HONORABLE COURT OF APPEALS IN CA SP 70408.

II.

THE COURT A QUO ERRED WHEN IT REFUSED TO DISMISS THE ORIGINAL COMPLAINT ON THE GROUND OF LITIS PENDENTIA.

III.

THE COURT A QUO ERRED WHEN IT REFUSED TO DISMISS THE ORIGINAL COMPLAINT ON THE GROUND OF FORUM SHOPPING.

IV.

THE COURT A QUO ERRED WHEN IT REFUSED TO SUSPEND THE HEARING ON THE ORIGINAL COMPLAINT DUE TO EXISTENCE OF A PREJUDICIAL QUESTION.

V.

THE COURT A QUO ERRED IN RULING IN FAVOR OF PASIG AND AGAINST UNIWIDE ON THE ORIGINAL CASE AND CORRESPONDINGLY IN FAVOR OF UNIWIDE AND AGAINST CAINTA ON THE THIRD PARTY COMPLAINT.

i. SPECIFICALLY, THE COURT A QUO ERRED WHEN IT FAILED TO RESOLVE IN ITS DECISION THE ISSUES OF:

ii.

a. LITIS PENDENTIA;
b. FORUM SHOPPING;
c. SUSPENSION OF THE PROCEEDINGS DUE TO THE EXISTENCE OF A PREJUDICIAL QUESTION;
d. PENDENCY OF THE PETITION FOR CERTIORARI BEFORE THE HONORABLE COURT OF APPEALS;

iii. SPECIFICALLY, THE COURT A QUO ERRED WHEN IT RULED THAT THE PROPERTIES SUBJECT MATTER OF THE DISPUTED TAXES IN INSTANT CASE FALL WITHIN

THE JURISDICTION OF PASIG ON THE BASIS OF THE LOCATIONAL ENTRIES APPEARING IN THE RESPECTIVE TITLES THEREOF; and

VI.

THE COURT A QUO ERRED WHEN IT AWARDED THE PAYMENT OF REAL ESTATE TAXES BY UNIWIDE TO PASIG ON THE ORIGINAL CASE AND CORRESPONDINGLY WHEN IT AWARDED THE REIMBURSEMENT THEREOF BY CAINTA TO UNIWIDE ON THE THIRD PARTY COMPLAINT.[9]

On the other hand, Uniwide, seeking partial reversal of the CA's decision, assigned the following errors in its petition:

ASSIGNMENT OF ERRORS

I.

THE COURT OF APPEALS ERRED WHEN IT DID NOT ORDER THE RESPONDENT MUNICIPALITY TO DIRECTLY REIMBURSE TO THE RESPONDENT CITY THE TAX PAYMENTS WHICH THE PETITIONER ERRONEOUSLY BUT IN GOOD FAITH PAID TO THE RESPONDENT MUNICIPALITY.

II.

THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE LIABILITY OF THE PETITIONER FOR ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT CITY.

III.

THE COURT OF APPEALS ERRED WHEN IT FIXED THE AWARD OF ATTORNEY'S FEES AGAINST THE RESPONDENT MUNICIPALITY IN FAVOR OF THE PETITIONER IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE.[10]

ISSUES

The issues culled from the errors presented can be summarized as follows:

---

[9] *Rollo* (G.R. No. 176703), pp. 29-30.

[10] *Rollo* (G.R. No. 176721), p. 41.

1. Whether the RTC–Pasig and the CA were correct in deciding in favor of Pasig by upholding the indefeasibility of the Torrens title over the subject properties, despite the pendency of the boundary dispute case between Pasig and Cainta; and if so, whether they properly decided the manner in settling the obligations due to Pasig; and
2. Whether the award of attorney's fees was proper.

THE COURT'S RULING

For purposes of complying with local tax liabilities, the taxpayer is entitled to rely on the location stated in the certificate of title.

Under the Local Government Code (*LGC*), local business taxes are payable for every separate or distinct establishment or place where business subject to the tax is conducted, which must be paid by the person conducting the same.[11] Section 150 therein provides the *situs* of taxation, to wit:

Section 150. *Situs of the Tax.* —

(a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and **the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located**. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality. (emphasis and underlining supplied)

For real property taxes, Presidential Decree (PD) 464 or the Real Property Tax Code provides that collection is vested in the locality where the property is situated, to wit:

---

[11] LGC, Sec. 146.

Sec. 5. *Appraisal of Real Property*. All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality **where the property is situated**.

x x x x x x x x x

Sec. 57. *Collection of tax to be the responsibility of treasurers*. The collection of the real property tax and all penalties accruing thereto, and the enforcement of the remedies provided for in this Code or any applicable laws, shall be the responsibility of the treasurer of the province, city or municipality **where the property is situated.** (emphases and underlining supplied)

This is affirmed by Sections 201 and 247 of the LGC, *viz.*:

Sec. 201. *Appraisal of Real Property.* All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing **in the locality where the property is situated**. The Department of Finance shall promulgate the necessary rules and regulations for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code.

x x x x x x x x x

Sec. 247. *Collection of Tax.* — The collection of the real property tax with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable laws, shall be the **responsibility of the city or municipal treasurer concerned**. (emphases and underlining supplied)

Since it is clear that local business taxes and realty taxes are to be collected by the local government unit where the business is conducted or the real property is located, the primordial question presented before this Court is: how is location determined for purposes of identifying the LGU entitled to collect taxes.

This Court holds that the location stated in the certificate of title should be followed until amended through proper judicial proceedings.

PD 1529, or the Property Registration Decree *(PRD)*, is an update of the Land Registration Act (Act 496) and relates to the registration of real property. Section 31 thereof provides that a decree of registration, once issued, binds the land and

quiets title thereto, and it is conclusive upon and against all persons, including the National Government and all branches thereof.[12]

The same section requires every decree of registration to contain a description of the land, as finally determined by the court. Such final determination is obtained by requiring the applicant to file a sworn application containing, among others, a description of the land sought to be registered,[13] together with all original muniments of title or copies thereof and a survey plan of the land approved by the Bureau of Lands.[14] A copy of the application and all its annexes must also be furnished to the Director of Lands.[15] The law also requires the applicant to attach to his application the plan and technical description showing the boundaries and location of the land.[16] The land registration court shall thereafter render judgment confirming

---

[12] Section 31. *Decree of registration.* Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern." (emphasis and underlining supplied)

[13] Property Registration Decree (PD 1529), Section 15.

[14] Property Registration Decree (PD 1529), Section 17.

[15] *Id*.

[16] Property Registration Decree (PD 1529), Section 31.

the title of the applicant if it finds that the applicant has sufficient title proper for registration, after considering the evidence and reports of the Commissioner of Land Registration and Director of Lands.[17]

The import of these provisions is that the land registration court, in confirming the applicant's title, necessarily passes upon the technical description of the land and consequently its location, based on proof submitted by the applicant and reports by the Commissioner of Land Registration and Director of Lands. There is thus basis to presume correct the location stated in the Certificate of Title and to rely thereon for purposes of determining the *situs* of local taxation, until it is cancelled or amended.

Said reliance is further demanded by Section 31 of the PRD when it mandated that a decree of registration, which necessarily includes the registered location of the land, is conclusive upon all persons, including the National Government and all branches thereof. In *Odsique v. Court of Appeals*,[18] the Supreme Court held that a certificate of title is conclusive not only of ownership of the land but also its location.

In the case at bar, it is undisputed that the subject properties are covered by TCTs which show on their faces that they are situated in Pasig;[19] that Uniwide's business establishment is situated within the subject properties; that the stated location has remained unchanged since their issuance; that prior payments of the subject taxes, fees, and charges have been made by Uniwide to Pasig;[20] and that there is no court order directing the amendment

---

[17] Section 29. *Judgment confirming title.* All conflicting claims of ownership and interest in the land subject of the application shall be determined by the court. If the court, after considering the evidence and the reports of the Commissioner of Land Registration and the Director of Lands, finds that the applicant or the oppositor has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant, or the oppositor, to the land or portions thereof.

[18] 305 Phil. 25, 30 (1994).

[19] Records, pp. 1108-1113.

[20] *Rollo* (G.R. No. 176721), p. 74.

of the subject TCTs with regard to the location stated therein.[21] This gives Pasig the apparent right to levy and collect realty taxes on the subject properties and business taxes on the businesses conducted therein.

The evidence presented by Cainta (i.e., Cadastral Survey and Maps, Certification from the DENR) to sustain its claim that the subject properties fall within its territorial jurisdiction are more properly submitted for the appreciation of the RTC–Antipolo, where the boundary dispute case is pending. The RTC–Antipolo would be able to best ascertain the extent and reach of Pasig and Cainta's respective territories.

Without the adjudication of the RTC–Antipolo finally determining the precise territorial jurisdiction of these local government units *(LGU)*, these documents alone cannot automatically effect a modification or amendment to the stated location in the TCTs for the purpose of exacting tax compliance, as the taxpayer is entitled to rely on the location clearly reflected in the certificate of title covering the properties. To hold otherwise would subject taxpayers to the vagaries of boundary disputes, to their prejudice and inconvenience and to the detriment of proper tax administration. Such scenario is contrary to the canons of a sound tax system. Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer.[22]

Moreover, the Implementing Rules and Regulations *(IRR)* of the LGC provides that in case of a boundary dispute, the status of the affected area prior to the dispute shall be maintained and continued for all purposes.[23] It is not controverted that the stated location in the TCTs has remained unchanged since their issuance and that Uniwide has faithfully paid its local business taxes, fees, and other charges to Pasig since 1989, prior to the

---

[21] *Id*.

[22] *Diaz, et al. v. The Secretary of Finance, et al.*, 669 Phil. 371, 393 (2011).

[23] Implementing Rules and Regulations of the LGC, Art. 18.

institution of the boundary dispute case. This status should be maintained until final judgment is rendered and the necessary amendments to the TCTs, if any, are made.

Notably, Section 108 of the PRD provides for the proper procedure in case of amendments to a certificate of title, wherein a registered owner or other person having an interest in registered property may apply by petition to the court on the ground that an omission or error was made in entering a certificate or any memorandum thereon, or upon any other reasonable ground, to wit:

> Section 108. *Amendment and alteration of certificates.* No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A **registered owner of other person having an interest in registered property**, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court **upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper**; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value

and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered. (emphasis and underlining supplied)

Thus, in the event that the RTC–Antipolo renders judgment finding that the subject properties are within the territorial jurisdiction of Cainta, Cainta may be considered a "person having an interest in registered property" for the purpose of applying for amendment to Uniwide's TCTs to reflect the proper locational entry based on a final judgment. Until then, however, the location stated in the TCTs shall be presumed correct and subsisting for the purpose of determining which LGU has taxing jurisdiction over the subject properties.

All told, considering that the TCTs show that the subject properties are located in Pasig, Pasig is deemed the LGU entitled to collect local business taxes and realty taxes, as well as relevant fees and charges until an amendment, if any, to the location stated therein is ordered by the land registration court after proper proceedings.

The action for tax collection can proceed despite the pendency of the boundary dispute case before the RTC–Antipolo and the petition for certiorari before the CA.

There is no merit to Cainta's contention that the RTC–Pasig should have dismissed or suspended the proceedings for tax collection on the ground of *litis pendentia*/forum shopping or the existence of a prejudicial question, respectively, in view of the pending boundary dispute case before the RTC–Antipolo.

There was no *litis pendentia* or forum shopping as would justify the dismissal of the tax collection case. The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final

judgment in one case amounts to res judicata in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[24]

As correctly found by the RTC–Pasig and affirmed by the CA, the first and second requisites are wanting. Uniwide is not a party to the boundary dispute case between Cainta and Pasig, and the first action is for settlement of boundary dispute while the second action is for collection of tax.

Moreover, the third requisite is also wanting, because regardless of which party is successful, a judgment in the boundary dispute case will not amount to res judicata in the tax collection case. As discussed above, the basis for determining which LGU has the apparent right to collect local taxes is the location as appearing on the certificate of title, unless an amendment thereto is duly made. It must be noted that during the subject years, the TCTs show that the subject properties are situated in Pasig, giving the latter the apparent right to collect taxes thereon, which is precisely the subject of the action under consideration. For this same reason, the Court cannot sustain Cainta's contention that the boundary dispute case presented a prejudicial question warranting the suspension of the tax collection case.

There is also no merit to the contention that it was erroneous for the RTC–Pasig to proceed with the tax collection case despite Cainta's filing of a petition for certiorari with the CA. A special civil action for certiorari under Rule 65 is an original or independent action.[25] An independent action does not interrupt

---

[24] *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 654 (2014).

[25] *Province of Leyte v. Energy Development Corporation*, G.R. No. 203124, 22 June 2015, 760 SCRA 149, 153; *Republic of the Philippines v. Bayao*, 710 Phil. 279, 286 (2013).

the course of the case unless there be a writ of injunction stopping it.[26] Although Cainta's petition for certiorari sought the issuance of a temporary restraining order and/or preliminary injunction, none was issued by the CA.[27] In any case, said petition had already been decided by the CA against Cainta on 30 September 2004,[28] which became final and executory on 28 October 2004.[29]

Uniwide must pay the applicable taxes and fees to Pasig for the subject years; and Cainta must reimburse to Uniwide the taxes that the latter paid for said period.

There is also no merit to Uniwide's contention that Pasig should directly recover from Cainta the tax payments under consideration, as a matter of expediting and inexpensively settling the tax liabilities.

Section 146 of the LGC expressly provides that the tax on a business must be paid by the person conducting the same, to wit:

Section 146. *Payment of Business Taxes.* —

(a) The taxes imposed under Section 143 shall be payable for every separate or distinct establishment or place where business subject to the tax is conducted and one line of business does not become exempt by being conducted with some other business for which such tax has been paid. **The tax on a business must be paid by the person conducting the same**. (emphasis and underlining supplied)

It is undisputed that Uniwide is the person conducting the business under consideration. Thus, it is the person against whom Pasig may properly pursue for payment of local business taxes.

However, it was erroneous for the CA to sustain the RTC–Pasig's decision directing Uniwide to also pay real estate taxes

---

[26] *Mortel v. Judge Leido, Jr.*, 297 Phil. 198, 204 (1993), citing *Palomares, et al. v. Jimenez*, 90 Phil. 773, 776 (1952).

[27] *Rollo* (G.R. No. 176721), p. 79.

[28] *Rollo* (G.R. No. 176703), pp. 99-104.

[29] *Id.* at 105.

to Pasig for the applicable years. In its complaint,[30] Pasig only alleged that Uniwide did not pay the fees for Mayor's Permit, business taxes, and other incidental fees and charges (i.e., sanitary and garbage fees, other miscellaneous charges) and consequently prayed for the payment thereof. It did not allege that Uniwide is also liable for payment of real estate taxes.

In fact, as alleged by Pasig[31] and admitted by Uniwide in its answer,[32] the realty taxes for the subject properties are paid by their registered owner. Both the CA and the RTC–Pasig found that the subject TCTs are registered under the name of Uniwide Sales Realty and Resources Corporation ("USRRC"), an affiliate of Uniwide,[33] and a corporation with separate and distinct personality from the latter which is not a party to the case at bar. Moreover, the RTC–Pasig even found that Uniwide paid to Pasig realty taxes for the subject properties amounting to ₱2,200,000.00 for the years 1996 to the first quarter of 1999, evidenced by an official receipt dated 22 June 1999.[34] The foregoing creates doubt as to Uniwide's liability for real estate taxes "beginning the year 1997 up to present," as directed by the RTC–Pasig, further considering that the subject properties had already been conveyed to Robinsons Land Corporation on 6 May 1999.[35]

In fine, for lack of sufficient proof to hold Uniwide liable for real estate taxes, it must only be liable to pay local business taxes to Pasig for the applicable years.

Cainta, on the other hand, is obligated to return the taxes erroneously paid to it by Uniwide pursuant to the principle against unjust enrichment.[36] The principle of unjust enrichment

---

[30] *Rollo* (G.R. No. 176721), pp. 85-92.

[31] *Id.* at 86.

[32] *Id.* at 96.

[33] *Id.* at 71.

[34] *Id.* at 131; Records, Vol. II, p. 1137.

[35] *Id.*

[36] CIVIL CODE, Art. 2154-2155.

has two conditions. First, a person must have been benefited without a real or valid basis or justification. Second, the benefit was derived at another person's expense or damage.[37]

As previously discussed, prior to final adjudication by the RTC–Antipolo on the boundary dispute case and necessary amendment to the TCTs, Cainta has no apparent right to collect the taxes on the subject properties. Thus, when Uniwide paid taxes to it, Cainta was benefited without real or valid basis, which benefit was derived at the expense of both Uniwide and Pasig.

The award of attorney's fees is not proper.

The award of attorney's fees is improper because the RTC–Pasig automatically awarded the same in the dispositive portion of its decision without stating the factual or legal basis therefor in the body of the decision.

The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of fact and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted.[38]

WHEREFORE, the petitions are **DENIED**. The 12 July 2006 decision and the 14 February 2007 resolution of the Court of Appeals in CA-G.R. CV No. 81806 are **AFFIRMED** in so far only as it sustains the payment of the local business taxes to the City of Pasig and the consequent reimbursement by the

---

[37] *Loria v. Munoz, Jr.*, 745 Phil. 506, 517 (2014).

[38] *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752, 774-775 (2013), citing *Frias v. San Diego-Sison*, 549 Phil. 49, 64 (2007).

Municipality of Cainta to Uniwide Sales Warehouse Club, Inc. The award of attorney's fees is **DELETED**.

SO ORDERED.

Mendoza (Acting Chairperson), Leonen, and *Caguioa,*[*] *JJ.,* concur.

Carpio (Chairperson), J., on official leave.

SECOND DIVISION

[G.R. No. 198583. June 28, 2017]

ARLYN ALMARIO-TEMPLONUEVO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, THE HONORABLE SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT and CHITO M. OYARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILING OF A PETITION FOR *CERTIORARI*; EXCEPTIONS.— The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. This rule, however, admits well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly

---

[*] Designated additional member per Raffle dated 14 September 2016.

raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

2. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OMBUDSMAN; FUNCTIONS AND DUTIES; WHEN THE DECISION OF THE OMBUDSMAN IS FINAL, UNAPPEALABLE AND IMMEDIATELY EXECUTORY, AN INDEPENDENT ACTION FOR *CERTIORARI* MAY BE AVAILED OF; CASE AT BAR.— In *Ombudsman v. Alano*, the Court stressed that Section 13(8), Article XI of the 1987 Constitution empowers the Office of the Ombudsman to, among others, "promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law." Pursuant to such constitutional authority, Administrative Order No. 07 (otherwise known as the "Rules of Procedure of the Office of the Ombudsman"), dated April 10, 1990, was issued. x x x The Court, in interpreting the above constitutional and statutory provisions, recognizes only two instances where a decision of the Ombudsman is considered as final and unappealable and, thus, immediately executory. The first is when the respondent is absolved of the charge; and second is, in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary. In this case, Templonuevo was meted with a penalty of one month suspension. Accordingly, the decision of the Ombudsman is final, unappealable and immediately executory. Being the case, the Ombudsman's decision was beyond the reach of an appeal or even of a motion for reconsideration. This was the same ruling in *Reyes v. Belisario*, where the Court explained that a complainant was not entitled to any corrective recourse by motion for reconsideration in the

Ombudsman, or by appeal to the courts if the penalty imposed was higher than public censure, reprimand, one-month suspension or a fine equivalent to a one month salary. x x x Left without any remedy in the ordinary course of law, Templonuevo was justified in resorting directly to the CA via a Rule 65 petition.

3. ID.; ID.; ID.; ID.; CONDONATION DOCTRINE; THE DOCTRINE OF CONDONATION STILL APPLIES IN CASE AT BAR SINCE THE EFFECT OF THE ABANDONMENT OF SAID DOCTRINE WAS MADE PROSPECTIVE IN APPLICATION.— The Ombudsman decided the case prior to the May 2010 elections. At that time,Templonuevo remained an incumbent and no event had transpired yet which would have had an effect on her liability for the acts done during her previous term. As the elections for 2010 did not happen yet, nothing could have substantially changed the course of action of the Ombudsman. The election of 2010, however, became material only when the Ombudsman's decision was on appeal. It is at this stage that the CA, should have considered Templonuevo's election as Vice Mayor as rendering the imposition of administrative sanctions moot and academic on the basis of the condonation doctrine. Said doctrine, despite its abandonment in *Conchita Carpio-Morales v. Court of Appeals and Jejomar Erwin S. Binay, Jr.,(Carpio-Morales),* still applies in this case as the effect of the abandonment was made prospective in application. In *Giron v. Ochoa*, the Court recognized that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*. x x x In this case, those who elected Templonuevo into office as Sangguniang Bayan member and Vice Mayor were essentially the same. Stated otherwise, the electorate for the Vice Mayor of a municipality embraces wholly those voting for a member of the Sangguniang Bayan. Logically, the condonation doctrine is applicable in her case. The Court is, thus, precluded from imposing the administrative penalties of one month suspension on account of the same people's decision to elect her again to office.

APPEARANCES OF COUNSEL

Arlyn Almario-Templonuevo in her own behalf.
Office of the Legal Affairs for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks the review of the February 17, 2011[1] and the September 20, 2011[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 116229. The CA issuances dismissed the petition for *certiorari* and prohibition filed by petitioner Arlyn Almario-Templonuevo *(Templonuevo)*, thus, affirming the January 6, 2010 Decision[3] of Office of the Deputy Ombudsman for Luzon *(Ombudsman)* in OMB-L-A-08-0097-B, finding her administratively liable for simple misconduct. The complaint against her was filed by respondent Chito M. Oyardo *(Oyardo)*.

Factual Antecedents

Templonuevo was elected as Sangguniang Bayan Member of the Municipality of Caramoran, Province of Catanduanes, during the May 2007 elections. She served from July 1, 2007 to June 30, 2010. In the elections of May 2010, she was elected as Municipal Vice Mayor of the same municipality.

In a complaint, docketed as OMB-L-A-08-0097-B, Oyardo administratively charged Templonuevo before the Ombudsman for violation of Sec. 2, par. 1 of Republic Act No. 9287.

In its January 6, 2010 Decision, the Deputy Ombudsman for Luzon found petitioner guilty of simple misconduct and imposed

---

[1] Penned by Associate Justice Jane Aurora C. Lantion, with Presiding Justice Andres B. Reyes, Jr., and Associate Justice Japar B. Dimaampao, concurring. *Rollo,* pp. 25-27.

[2] *Id*. at 28-31.

[3] Penned by Graft Investigation and Prosecution Officer II, Marietta M. Ramirez, with Acting Director Evaluation Investigation Office Bureau A Joaquin F. Salazar, concurring. With the recommending approval of Deputy Ombudsman for Luzon, Victor C. Fernandez and with such recommendation approved by Deputy Ombudsman for Luzon, Mark E. Jalandoni. *Id.* at 32-41.

upon her the penalty of one month suspension without pay. The dispositive portion of said decision reads:

> **WHEREFORE**, **premises considered,** it is hereby respectfully recommended that **ARLYN ALMARIO-TEMPLONUEVO** be adjudged guilty of violation of simple misconduct and is hereby imposed a penalty of one (1) month suspension from office without pay pursuant to Section 7 Rule III of the Administrative Order No. 07 as amended by Administrative Order No. 17 in relation to Republic Act No. 6770.
>
> The Honorable Secretary Ronaldo V. Puno, Department of Interior and Local Government, is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, Series of 2006 dated 11 April 2006 and to promptly inform this office of the action taken hereon.
>
> **SO DECIDED**.[4]

At the time Templonuevo received her copy of the January 6, 2010 Decision on September 27, 2010, her term as Sangguniang Bayan Member had expired. She, however, was elected as Vice Mayor of the same municipality.

Without filing a motion for reconsideration, Templonuevo directly filed before the CA an original petition for certiorari and prohibition under Rule 65 of the Rules of Court. She claimed that the Ombudsman acted with grave abuse of discretion in ordering her suspension at a time when her term of office as Sangguniang Bayan Member had already expired and she had been elected as Vice Mayor in the May 2010 elections.

In its February 7, 2011 Resolution,[5] the CA dismissed outright the petition on the ground of Templonuevo's failure to file a motion for reconsideration. According to the CA, the remedy of certiorari will not lie if other plain and speedy remedies in the ordinary course of law such as a motion for reconsideration

---

[4] *Id*. at 40.

[5] *Id*. at 27.

are available, which, in this case, was not sought after by Templonuevo.

Templonuevo moved for reconsideration, but her motion was denied by the CA in its September 8, 2011 Resolution.

Aggrieved, Templonuevo elevated the case to this Court via Rule 45 of the Rules of Court.

Hence, this petition.

Templonuevo asserts that the CA decided questions of substance contrary to law and the applicable decisions of this Court when her petition was dismissed outright on the ground of failure to file a motion for reconsideration. She claims that there was no need to file for reconsideration considering that the Ombudsman's decision has become final, executory and unappealable. She cites, as support, Section 7, Rule III of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Ombudsman, as amended by A.O. No. 17, which provides:

> Section 7. Finality and execution of decision.— Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals in a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from the receipt of the written Notice of the Decision or Oder denying the Motion for Reconsideration.
>
> An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.
>
> A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove,

suspend, demote, fine or censure shall be ground for disciplinary action against said officer.

To Templonuevo, said AO makes a motion for reconsideration unavailable in cases where a respondent is absolved of the charge or in cases of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine of equivalent to one month salary. Considering that she was given the penalty of one-month suspension only, her only remedy then was to file a petition for *certiorari* under Rule 65 of the Rules of Court.

In furtherance of her position, Templonuevo cites *Office of the Ombudsman v. Alano*,[6] wherein the Court ruled that a resolution or order of the Ombudsman becomes final and unappealable in the instances mentioned by her. The effect of such finality, in her view, is simple — that the motion for reconsideration is not required before resorting to the extraordinary remedy of *certiorari*. This was, according to her, the same conclusion reached by the Court in *Reyes, Jr. v. Belisario*.[7] There, it was held that the complainant therein was not entitled to any corrective recourse, whether by motion for reconsideration, or by appeal to the courts, to effect a reversal of the exoneration. The Court further held that despite such a fact, courts are still empowered by the Constitution to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Templonuevo, thus, believes that because the decision of the Ombudsman in her case was immediately final, executory and unappealable, the same could no longer be reviewed by the said office and as such a motion for reconsideration would be an exercise in futility. The CA should have taken note of that fact and such a failure amounts to an error, says petitioner.

Templonuevo likewise calls the Court's attention to the fact that the misconduct for which she was penalized was committed

---

[6] 544 Phil. 709 (2007).

[7] 612 Phil. 937 (2009).

when she was still a Sangguniang Bayan Member. As she was elected Vice Mayor of the same municipality in 2010, she claims that such election resulted in the condonation of her administrative liability on acts committed during her previous post. She cites the case of *Pascual v. Hon. Provincial Board of Nueva Ecija,*[8] where this Court held that the re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefrom. Consequently, the decision of the Ombudsman is in her view a patent nullity.

On November 16, 2011, the Court resolved to require the respondents to comment on the petition and also issued a Temporary Restraining Order enjoining the respondents from implementing the Decision of the Office of the Ombudsman.[9]

On December 2, 2011, the Office of the Solicitor General *(OSG)* filed a Manifestation and Motion (in Lieu of Comment),[10] stating that the arguments raised by it in its Manifestation and Motion (in Lieu of Comment), dated April 26, 2011 and filed on April 28, 2011 with the CA, was exhaustive enough to serve as its comment on the present petition. The OSG in the pleadings it filed with the CA took the side of Templonuevo. It, thus, asserts that by virtue of AO No. 7, as amended, a decision of Ombudsman imposing a penalty of not more than one (1) month is final, executory and unappealable and, as such, a motion for reconsideration or appeal is not an available remedy. It also claimed that the subsequent re-election of Templonuevo precludes the imposition and execution of the penalty by virtue of the long standing doctrine of condonation.

In its Comment on the Petition For Review on *Certiorari* with Leave of Court (With Motion to Recall the Temporary Restraining Order with Opposition to the Issuance of a Writ of Preliminary Injunction),[11] the Ombudsman submits that Section 7, Rule III,

---

[8] 106 Phil. 466 (1959).

[9] See *Rollo,* pp. 86-90.

[10] *Id.* at 91-115.

[11] *Id.* at 141-163.

Administrative Order No. 07, as amended, allows the filing of motions for reconsideration on its decisions that impose one month suspension; that a plethora of jurisprudence reveals that the Condonation Doctrine was applied by the Supreme Court only in cases where there was re-election to the same position; and that, the issuance of a temporary restraining order was erroneous and the error should not be extended with the issuance of a writ of preliminary injunction which the law proscribes.

In the meantime, Templonuevo filed a Manifestation in Lieu of Compliance[12] with the January 25, 2012 Resolution which ordered her to furnish this Court with the current address of Oyardo. She stated therein that she did not know the present address of Oyardo, who was not a permanent resident of Caramoan, and that no forwarding address was left behind.

In its July 18, 2012 Resolution,[13] the Court noted the manifestation and required the Ombudsman to furnish the address of Oyardo. This was complied with.[14]

Oyardo still failed to file his Comment on the petition. As such, in the Court's September 14, 2015 Resolution,[15] Oyardo's right to file his comment was deemed waived. In the same Resolution, the Court required Templonuevo to file her Reply to the manifestation and motion of the OSG, dated December 1, 2011, and to the Comment on the Petition for Review on Certiorari with Leave of Court filed by the Ombudsman.

Until now, no reply has been filed by Templonuevo. She is deemed to have waived her right to file it.

Issues

A reading of the pleadings filed by the parties reveals that the issues are as follows:

---

[12] *Id*. at 165-167.

[13] *Id*. at 170-171.

[14] *Id*. at 193-194.

[15] *Id*. at 210-211.

1. Whether the CA committed an error in dismissing outright the petition filed by Templonuevo on the ground of failure to file a motion for reconsideration from the decision of the Ombudsman finding her administratively liable and imposing upon her a penalty of one month suspension.

2. Whether the CA committed an error in not treating the election of Templonuevo as Vice Mayor of the same municipality as an event that precludes the imposition of the one month suspension penalty following the doctrine of condonation.

The Ruling of the Court

The Court grants the petition.

A motion for reconsideration is not required where the penalty imposed by the Ombudsman is one month suspension before a petition under Rule 65 can be filed.

The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.[16] Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case.[17]

This rule, however, admits well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice

---

[16] *Commissioner of Internal Revenue v. Court of Tax Appeals*, 695 Phil. 55, 61 (2012); *Medado v. Heirs of Consing*, 681 Phil. 536, 548 (2012), citing *Pineda v. Court of Appeals*, 649 Phil. 562, 571 (2010).

[17] *Id.* at 61.

the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[18]

Templonuevo contended that her non-filing of a motion for reconsideration of the assailed Ombudsman decision was justified because it would be useless. She claims that the assailed decision was final, executory and unappealable, hence, beyond the ambit of a motion for reconsideration following Section 7, Rule III of Administrative Order No. 07. She also argued that the Ombudsman's decision was a patent nullity considering that her election as Vice Mayor of the same municipality precluded the attachment to her of any administrative liability arising from the acts done while she was a Sangguniang Bayan Member.

The Court agrees with Templonuevo on her first position.

In *Ombudsman v. Alano*,[19] the Court stressed that Section 13(8), Article XI of the 1987 Constitution empowers the Office of the Ombudsman to, among others, "promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law." Pursuant to such constitutional authority, Administrative Order No. 07 (otherwise known as the "Rules of Procedure of the Office of the Ombudsman"), dated April 10, 1990, was issued. Section 7, Rule III thereof provides:

---

[18] *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 137 (2010). See also *Republic v. Pantranco North Express, et al.*, 682 Phil. 186, 194, (2012). See also *Domdom v. Sandiganbayan,* 627 Phil. 341, 346 (2010), citing *Tan v. Court of Appeals*, 341 Phil. 570, 576-578 (1997).

[19] *Supra* note 6.

SEC. 7. Finality of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.

The Court, in interpreting the above constitutional and statutory provisions, recognizes only two instances where a decision of the Ombudsman is considered as final and unappealable and, thus, immediately executory. The first is when the respondent is absolved of the charge; and second is, in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary.

In this case, Templonuevo was meted with a penalty of one month suspension. Accordingly, the decision of the Ombudsman is final, unappealable and immediately executory.

Being the case, the Ombudsman's decision was beyond the reach of an appeal or even of a motion for reconsideration. This was the same ruling in *Reyes v. Belisario*,[20] where the Court explained that a complainant was not entitled to any corrective recourse by motion for reconsideration in the Ombudsman, or by appeal to the courts if the penalty imposed was higher than public censure, reprimand, one-month suspension or a fine equivalent to a one month salary. It was further written:

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty

[20] 612 Phil. 937 (2009).

imposed is higher than public censure, reprimand, one-month suspension or fine equivalent to one month salary.[21]

Left without any remedy in the ordinary course of law, Templonuevo was justified in resorting directly to the CA via a Rule 65 petition. Indeed, an independent action for *certiorari* may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law and certiorari is not a substitute for the lapsed remedy of appeal.[22] In other words, because petitioner could not avail a motion for reconsideration or an appeal, her choice of a Rule 65 petition was proper.

The decision of the Ombudsman was not a patent nullity; Condonation doctrine applies.

Templonuevo claimed that the decision of the Ombudsman was null and void as the penalty imposed could no longer be imposed on account of her election as Vice Mayor of the same municipality, which to her, operated as forgiveness by her constituents for the acts done while she was still a Sangguniang Bayan Member. This "theory of nullity," in a sense, does not hold water. The Ombudsman decided the case prior to the May 2010 elections. At that time,Templonuevo remained an incumbent and no event had transpired yet which would have had an effect on her liability for the acts done during her previous term. As the elections for 2010 did not happen yet, nothing could have substantially changed the course of action of the Ombudsman.

The election of 2010, however, became material only when the Ombudsman's decision was on appeal. It is at this stage that the CA, should have considered Templonuevo's election as Vice Mayor as rendering the imposition of administrative sanctions moot and academic on the basis of the condonation doctrine. Said doctrine, despite its abandonment in *Conchita Carpio-Morales v. Court of Appeals and Jejomar Erwin S. Binay,*

---

[21] *Id*. at 954.

[22] See Rules of Court, Rule 65, Section 1.

Jr.,(Carpio-Morales),[23] still applies in this case as the effect of the abandonment was made prospective in application.

In *Giron v. Ochoa*,[24] the Court recognized that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*. Thus, the Court ruled:

> On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in *Carpio-Morales*, the basic considerations are the following: *first,* the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; s*econd*, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and *third,* courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. **In this case, it is a given fact that the body politic, who elected him to another office, was the same.** [Emphasis supplied]

In this case, those who elected Templonuevo into office as Sangguniang Bayan member and Vice Mayor were essentially the same. Stated otherwise, the electorate for the Vice Mayor of a municipality embraces wholly those voting for a member of the Sangguniang Bayan. Logically, the condonation doctrine is applicable in her case. The Court is, thus, precluded from imposing the administrative penalties of one month suspension on account of the same people's decision to elect her again to office.

WHEREFORE, the petition is **GRANTED**. The February 17, 2011 and September 20, 2011 Resolutions of the Court of

---

[23] G.R. Nos. 217126-27, November 10, 2015.

[24] G.R. No. 218463, March 1, 2017, https://cdasiaonline.com/jurisprudences 62604? hits%5B%5D%5Bid%5D=62604&hits%5B%5D%5Btype%5D= Jurisprudence&path=%2Fjurisprudences%2Fsearch&q%5Bcitation_finder%5 D=&q%5Bfull_text%5D=&q%5Bissue_no%5D=218463&q%5Bponente%5D= &q%5Bsyllabus%5D=&q%5Btitle%5D=&q%5Butf8%5D=%E2%9C%93 &q%5Byear_end%5D=&q%5Byear_start%5D=.

Appeals in CA-G.R. SP No. 116229 are hereby **REVERSED** and **SET ASIDE**. The act committed by petitioner Arlyn Almario-Templonuevo is deemed **CONDONED**.

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *Leonen,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

THIRD DIVISION

[G.R. No. 203114. June 28, 2017]

VIRGILIO LABANDRIA AWAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— [I]n prosecutions for acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Youth, and, as is more applicable herein, immaturity of the victim are generally badges of truth that the courts cannot justly ignore. The contention of the petitioner that the charge was a mere fabrication of the victim's mother who held a grudge against him deserves scant consideration. The contention is nothing but a desperate attempt to escape the consequences of his depravity. No mother would contemplate subjecting her very young daughter to the humiliation, disgrace, exposure, anxiety and tribulation attendant to a public trial for a crime against chastity that in all likelihood would result in the incarceration of the accused unless she was

---

[*] Per Special Order No. 2445 dated June 16, 2017.

motivated solely by the honest and sincere desire to have the person responsible apprehended and punished. The acts committed by the petitioner against AAA constituted acts of lasciviousness. The elements of acts of lasciviousness under Article 336 of the *Revised Penal Code* are, to wit: (1) the offender commits any act of lasciviousness or lewdness; (2) the act 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) the offended party is another person of either sex.

2. **ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); CHILD ABUSE; ELEMENTS.—** Section 2(h) of the Implementing Rules and Regulations of Republic Act No. No. 7610 defines *lascivious conduct* as: The 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. x x x Such acts are punished as sexual abuse under Republic Act No. No. 7610, whose elements under Section 5 of the law are namely: (1) the accused commits the acts of sexual intercourse or *lascivious conduct*; (2) the act is performed with a child exploited in prostitution or *subjected to other sexual abuse*; and (3) the child, whether male or female, is *below 18 years of age*.

3. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** Anent the penalty to be imposed on the petitioner, Section 5(b), Article III of Republic Act No. 7610 pertinently provides: x x x the penalty for lascivious conduct when the victim is under 12 years of age is *reclusion temporal* in its medium period, which ranges from 14 years, eight months and one day to 17 years and four months. Applying the *Indeterminate Sentence Law*, the penalty next lower to the statutory penalty is *reclusion temporal* in its minimum period (*i.e.*, 12 years and one day to 14 years and eight months). Due to the absence of modifying circumstances, the statutory penalty is imposed in its medium period (*i.e.*, 15 years, six months and 21 days to 16 years, five months and 10

days). The gravity of the imposable penalty serves the declared policy of the State expressed in Section 2 of Republic Act No. 7610, x x x The imposition of the fine by the lower courts had no legal basis because the law nowhere imposes it. *Nullum poenum sine lege*. Considering that neither Article 336 of the Revised Penal Code nor Section 5 of Republic Act No. 7610, the laws governing this case, prescribes any fine, the imposition thereof is deleted.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHENEVER THE CREDIBILITY OF ANY WITNESS IS IN ISSUE, THE FINDINGS THEREON OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS ARE ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT.— The failure of AAA to shout during the incident would not exculpate the petitioner. There is no standard behavior for a victim of a crime against chastity. Behavioral psychology teaches that people react to similar situations dissimilarly. AAA could have been submissive due to her tender age, but the fact that she did cry after the incident was a true indication, indeed, that she had felt violated. Worthy to note is that her own brother, upon noticing her crying, inquired why she was crying, and she then told him that the petitioner had touched her vagina. We reiterate that assigning values to the declarations of witnesses as they testify is best and most competently performed by the trial judges on account of their unique opportunity to personally observe the witnesses and to assess the various indicia of their credibility then available but not reflected in the records. Whenever the credibility of any witness is in issue, the findings thereon of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Under review is the decision promulgated on May 8, 2012,[1] whereby the Court of Appeals (CA) affirmed with modification the decision rendered on February 4, 2011 by the Regional Trial Court, Branch 172, in Valenzuela City finding the petitioner guilty of acts of lasciviousness under Article 336 of the *Revised Penal Code* in relation to Section 5(b), Article III of Republic Act No. 7610.[2]

The information charged the petitioner with rape through sexual abuse, alleging as follows:

> That on or about January 24, 2010 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, by means of force and intimidation employed upon the person of one AAA (victim/complainant), 10 years old (DOB June 30, 1999), did then and there, unlawfully and feloniously insert his finger into the vagina of the victim/complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.
>
> CONTRARY TO LAW.[3]

After the petitioner entered his plea of *not guilty* on February 12, 2010,[4] the case proceeded to pre-trial and trial. During the pre-trial on April 16, 2010, the Prosecution and the Defense stipulated, among others, that the victim had been a minor at the time of the commission of the alleged offense.[5]

---

[1] *Rollo*, pp. 29-41; penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Manuel M. Barrios.

[2] *Id*. at 61-65; penned by Presiding Judge Nancy Rivas-Palmones.

[3] *Id*. at 61.

[4] *Id*.

[5] *Id*. at 31.

The evidence of the Prosecution is summarized in the assailed decision of the CA as follows:

AAA, a Grade III pupil declared that [petitioner] is the boyfriend of her sister. Sometime in January 2010, [petitioner] was in their house in Valenzuela City. [Petitioner] called her and brought her inside the room. [Petitioner] touched her vagina. [Petitioner] made her lie down beside him and again touched her vagina. Thereafter, [petitioner] put on his shoes and warned her not to tell her mother and father about the incident.

AAA was wearing leggings and panty at the time of the incident. Petitioner never removed anything from her when he touched her. At the time of the incident, they were the only person (sic) inside the room. Her father and other siblings were then asleep in another room while his brother was downstairs.

AAA's brother came to know about the incident when he saw her crying in a corner of their house. Her brother told her mother about the incident. Her mother called a police and petitioner was later apprehended. Her mother gave her statements at the police station.

On January 25, 2010, Ortiz, a medico-legal officer of the PNP Crime Laboratory, received a request for Physical/Genital Examination on the person of AAA. His examination states: "ano-genital examination reveals essentially normal gross findings." He observed that AAA's hymen was annular, thin with central orifice and no abnormality noted. There was no evidence of any sexual abuse because of his findings that AAA's genital organ is normal.[6]

On the other hand, the Defense presented the petitioner as its lone witness, and his testimony is synthesized in the assailed decision thusly:

AAA was the sister of his girlfriend. He and his girlfriend had been a couple for one year and five months. He visited his girlfriend's house only for three (3) times since August 29, 2008 up to January 24, 2010. He rarely visits his girlfriend at their house because he was busy with his work delivering food in the market. He was an employee of Amado Pingco of Harkmen Company in Marikina Heights as stay-in worker.

---

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

On January 24, 2010, his girlfriend called him up and told him to go to their house to give him something. He left Marikina at around 3:30p.m. and arrived in Valenzuela City at around 5:30 p.m. While he was in front of his girlfriend's house, the mother and brother of his girlfriend went out of the house and said to him "*walanghiya ka, bakit mo nirape ang anak ko*". At that time, he received a text message from his girlfriend that she was in the market buying something. He was surprised at the accusations against him. His girlfriend's mother and brother told him that if he really did not rape AAA he will go with them to the police block. They forced him to board a tricycle and warned him of being mauled by the persons standing there. A tricycle passed by and he was brought to the police block. He learned that it was AAA who complained against him. But AAA was not at the police block at that time. He was transferred to the police headquarters where he saw AAA with his girlfriend. He attempted to approach his girlfriend but her mother pulled her away. Prior to the incident, his girlfriend told him that he should not show himself to her mother whenever he is drunk. Her mother noticed that he seldom visits her at their house. After the incident, he no longer saw his girlfriend. He denied having entered the house of his girlfriend on January 24, 2010. There were occasions, however, prior to January 24, 2010 that he was able to enter his girlfriend's house.[7]

As mentioned, the RTC found the petitioner guilty of acts of lasciviousness as defined in Article 336 of the *Revised Penal Code* and penalized pursuant to Section 5(b), Article III of Republic Act No. 7610, disposing thusly:

WHEREFORE, premises considered, the court hereby finds accused VIRGILIO LABANDIRA AWAS guilty beyond reasonable doubt as principal for the offense of acts of lasciviousness under Art. 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA 7610 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of reclusion temporal as minimum, to fifteen years six months and 20 days of reclusion temporal as maximum, ₱15,000.00 as moral damages and ₱10,000 fine.

Costs de officio.

SO ORDERED.[8]

---

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

[8] *Id*. at 65.

On appeal, the CA promulgated the assailed decision on May 8, 2012,[9] affirming the conviction and decreeing:

> **WHEREFORE**, premises considered, the instant appeal is hereby DENIED. The assailed Decision dated February 4, 2011, of the Regional Trial Court, Branch 172, Valenzuela City, in Crim. Case No. 70-V-10 is **AFFIRMED** with **MODIFICATION** that:
>
> Appellant is hereby ordered to pay AAA the following:
>
> 1. ₱20,000.00 as civil indemnity
>
> 2. ₱15,000.00 as moral damages
>
> 3. ₱15,000.00 as exemplary damages, and to pay a fine amounting to ₱15,000.00.
>
> **SO ORDERED.**[10]

The petitioner moved for reconsideration, but the CA denied his motion on August 6, 2012.[11]

Hence, this appeal, wherein the petitioner submits as the sole question to be considered and resolved:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION DESPITE THE PROSECUTION'S FAILURE TO PROVE BEYOND REASONABLE DOUBT THE PETITIONER'S GUILT FOR THE CRIME CHARGED[12]

Ruling of the Court

The appeal lacks merit.

The petitioner argues that the circumstances surrounding the alleged lascivious conduct committed against AAA were not in accord with human experience; that it was quite strange that she did not shout for help although the room had no door, and

---

[9] *Supra* note 1.

[10] *Rollo*, p. 40.

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

[12] *Id.* at 15.

there were then other persons in the house; and that she neither protested nor offered any resistance during the entire time she was being molested, which lasted for quite a time.

The arguments of the petitioner do not persuade.

The petitioner apparently assails the credibility of AAA. In that regard, he fails because the evidence of the Prosecution competently and firmly established his having touched the vagina of AAA at least twice. Also, his insistence that he did not exert any force or perform any act of intimidation lacks persuasion because the absence of force or intimidation was immaterial if AAA as the victim of the acts of lasciviousness was then below 12 years of age.

The failure of AAA to shout during the incident would not exculpate the petitioner. There is no standard behavior for a victim of a crime against chastity. Behavioral psychology teaches that people react to similar situations dissimilarly.[13] AAA could have been submissive due to her tender age, but the fact that she did cry after the incident was a true indication, indeed, that she had felt violated. Worthy to note is that her own brother, upon noticing her crying, inquired why she was crying, and she then told him that the petitioner had touched her vagina.

We reiterate that assigning values to the declarations of witnesses as they testify is best and most competently performed by the trial judges on account of their unique opportunity to personally observe the witnesses and to assess the various indicia of their credibility then available but not reflected in the records. Whenever the credibility of any witness is in issue, the findings thereon of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect.[14]

Moreover, in prosecutions for acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to

---

[13] *People v. Manalili,* G.R. No. 184598, June 23, 2009, 590 SCRA 695, 712.

[14] *People v, Basao*, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 542-543.

establish the guilt of the accused.[15] Youth, and, as is more applicable herein, immaturity of the victim are generally badges of truth that the courts cannot justly ignore.[16]

The contention of the petitioner that the charge was a mere fabrication of the victim's mother who held a grudge against him deserves scant consideration. The contention is nothing but a desperate attempt to escape the consequences of his depravity. No mother would contemplate subjecting her very young daughter to the humiliation, disgrace, exposure, anxiety and tribulation attendant to a public trial for a crime against chastity that in all likelihood would result in the incarceration of the accused unless she was motivated solely by the honest and sincere desire to have the person responsible apprehended and punished.[17]

The acts committed by the petitioner against AAA constituted acts of lasciviousness. The elements of acts of lasciviousness under Article 336 of the *Revised Penal Code* are, to wit: (1) the offender commits any act of lasciviousness or lewdness; (2) the act 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) the offended party is another person of either sex.[18] Such acts are punished as sexual abuse under Republic Act No. No. 7610,[19] whose elements under Section 5 of the law are namely: (1) the accused commits the acts of sexual intercourse or *lascivious conduct*; (2) the act is performed with a child exploited in prostitution

---

[15] *People v. Mendoza*, G.R. No. 180501, December 24, 2008, 575 SCRA 616, 633.

[16] *People v. Cataytay*, G.R. No. 196315, October 22, 2014, 739 SCRA 201.

[17] *People v. Ortoa*, G.R. No. 174484, February 23, 2009, 580 SCRA 80, 93.

[18] *People v. Banan*, G.R. No. 193664, March 23, 2011, 646 SCRA 420, 434.

[19] *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

or *subjected to other sexual abuse*; and (3) the child, whether male or female, is *below 18 years of age*.[20]

Section 2(h) of the Implementing Rules and Regulations of Republic Act No. No. 7610 defines *lascivious conduct* as:

> The 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.[21]

Anent the penalty to be imposed on the petitioner, Section 5(b), Article III of Republic Act No. 7610 pertinently provides:

> Section 5. Child Prostitution and Other Sexual Abuse — Children, whether male or female, who for money, profit, or any other consideration or due to 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.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> (a) x x x
>
> (b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim 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 (12) years of age shall be *reclusion temporal* in its medium period;** x x x

Pursuant to the foregoing, the penalty for lascivious conduct when the victim is under 12 years of age is *reclusion temporal*

---

[20] *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243, 253-254.

[21] *People v. Bonaagua*, G.R. No. 188897, June 6, 2011, 650 SCRA 620, 639.

in its medium period, which ranges from 14 years, eight months and one day to 17 years and four months. Applying the *Indeterminate Sentence Law*, the penalty next lower to the statutory penalty is *reclusion temporal* in its minimum period (*i.e.*, 12 years and one day to 14 years and eight months). Due to the absence of modifying circumstances, the statutory penalty is imposed in its medium period (*i.e.*, 15 years, six months and 21 days to 16 years, five months and 10 days).

The gravity of the imposable penalty serves the declared policy of the State expressed in Section 2 of Republic Act No. 7610, *viz.*:

> Section 2. *Declaration of State Policy and Principles.* — It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.
>
> It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.
>
> The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

The CA affirmed the imposition of the indeterminate sentence of 12 years and one day of *reclusion temporal* in its minimum period as the minimum to 15 years, six months and 20 days of *reclusion temporal* in its medium period as the maximum. However, the maximum of the indeterminate sentence was short by *one day*, with the effect of imposing the legal penalty in its

minimum period. We correct the penalty as a matter of course by fixing the indeterminate sentence of the petitioner at 12 years and one day of *reclusion temporal* in its minimum period, as the minimum, to 15 years, six months and **21** days of *reclusion temporal* in its medium period, as the maximum.

Another error of the CA that requires correction as a matter of course is the imposition of the fine of ₱15,000.00, increasing even the ₱10,000.00 set by the RTC as fine. The imposition of the fine by the lower courts had no legal basis because the law nowhere imposes it.[22] *Nullum poenum sine lege*.[23] Considering that neither Article 336 of the *Revised Penal Code* nor Section 5 of Republic Act No. 7610, the laws governing this case, prescribes any fine, the imposition thereof is deleted.

Lastly, although there has been no issue raised as to the civil indemnity, moral and exemplary damages, we prescribe interest of 6% *per annum* on them reckoned from the finality of this decision until full payment.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 8, 2012 subject to the **MODIFICATIONS** that: (1) the petitioner shall suffer the indeterminate penalty of 12 years and one day of *reclusion temporal* in its minimum period, as the minimum, to 15 years, six months and 21 days of *reclusion temporal* in its medium period, as the maximum; (2) the fine of ₱15,000.00 is deleted; and (3) the petitioner shall pay interest of 6% *per annum* on the civil indemnity, moral and exemplary damages reckoned from the finality of this decision until full payment.

Costs of suit to be paid by the petitioner.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta,[*] *Reyes,* and *Tijam, JJ.*, concur.

---

[22] See Article 21, *Revised Penal Code*, which states: "No felony shall be punishable by any penalty not prescribed by law prior to its commission."

[23] Literally translated – *There is no penalty without a law imposing it*.

[*] In lieu of Justice Francis H. Jardeleza, who inhibited due to his prior action as the Solicitor General, per the raffle of June 21, 2017.

SECOND DIVISION

[G.R. No. 212201. June 28, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO DENIEGA *y* ESPINOSA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; WHEN COMMITTED; ELUCIDATED.—** Statutory rape is committed when: (1) the offended party is under twelve years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. This Court has consistently held that rape under Article 266-A(1)(d) of the Revised Penal Code, as amended, is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.

2. **ID.; ID.; ID.; SEXUAL INTERCOURSE WITH A WOMAN WHO IS A MENTAL RETARDATE, WITH A MENTAL AGE BELOW 12 YEARS OLD, CONSTITUTES STATUTORY RAPE.—** It is also a settled rule that sexual intercourse with a woman who is a mental retardate, with a mental age below 12 years old, constitutes statutory rape. In *People v. Quintos,* this Court held that if a mentally-retarded or intellectually-disabled person whose mental age is less than 12 years is raped, the rape is considered committed under paragraph 1(d) and not paragraph 1(b), Article 266-A of the RPC. In holding as such, this Court differentiated the term "mentally-retarded" or "intellectually disabled" from the terms

"deprived of reason" and "demented" as used under Article 266-A, paragraphs 1(b) and 1(d) of the RPC.

3. ID.; ID.; ID.; WHEN A VICTIM'S TESTIMONY IS CREDIBLE AND SUFFICIENTLY ESTABLISHES THE ELEMENTS OF THE CRIME, IT MAY BE ENOUGH BASIS TO CONVICT AN ACCUSED OF RAPE; CASE AT BAR.— In the present case, it is true that based on the medical and psychiatric evaluation of AAA, she has moderate mental retardation and that she has the mental age of a six-year-old child. Accused-appellant makes much of this fact to discredit the testimony of AAA. This Court has, nonetheless, held that competence and credibility of mentally deficient rape victims as witnesses have been upheld where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. The basic rule is that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape. What makes the case stronger for the prosecution is that the testimony of AAA is corroborated by the medical findings of the presence of a "deep healing laceration" in her hymen which was caused by a blunt object. Such medico-legal findings bolsters the prosecution's testimonial evidence. Together, these pieces of evidence produce a moral certainty that accused-appellant indeed raped the victim.

4. ID.; ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE AND THAT 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.— There is no evidence to show that there were people present at the basketball court where the crime was committed. Moreover, it is probable that people did not notice accused-appellant having sexual intercourse with AAA because there was then an ongoing basketball game at another court and the attention of the persons present were directed at

the said game. Besides, as testified by the victim, it only took a minute for accused-appellant to consummate his carnal desire, after which they immediately went back. In any case, as correctly cited by the OSG, this Court has held that lust is no respecter of time and place and that 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.

5. ID.; ID.; ID.; ALIBI AND DENIAL; BOTH DEFENSES OF ALIBI AND DENIAL CANNOT PREVAIL OVER THE POSITIVE DECLARATION OF THE VICTIM WHO, IN A NATURAL AND STRAIGHTFORWARD MANNER, CONVINCINGLY IDENTIFIES THE ACCUSED-APPELLANT AS THE PERPETRATOR OF THE CRIME; CASE AT BAR.— Countless times, this Court has declared that alibi is an inherently weak defense. Unless supported by clear and convincing evidence, it cannot prevail over the positive declaration of a victim who, in a natural and straightforward manner, convincingly identifies the accused-appellant. Positive identification, where consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over denial. On the other hand, denial – if not substantiated by clear and convincing evidence " is negative, self-serving and undeserving of any weight in law. In the present case, the OSG correctly echoed the trial court's observation that accused appellant failed to account for his whereabouts between 8 o'clock in the evening and 10 o'clock of the same night, which is the approximate time that AAA was raped. Moreover, the place where the crime was committed was a mere three streets away from where accused-appellant and his friend were having a drinking session. This leads to the conclusion that it is not impossible for accused-appellant to be at the scene of the crime at the approximate time that it was committed, after which, he would still have enough time to go back to their drinking session and get himself extremely drunk.

6. ID.; ID.; ID.; IMPOSABLE PENALTY.— Statutory rape, penalized under Article 266-A, paragraph 1(d) of the RPC, as amended, carries the penalty of *reclusion perpetua* under Article 266-B of the same Code, unless attended by qualifying circumstances defined therein, among which is "when the

offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime," in which case the death penalty shall be imposed. In the instant case, as discussed above, the victim, AAA, is considered below twelve (12) years old at the time of the commission of the crime. Moreover, it was alleged in the Information and established by the prosecution that accused-appellant had knowledge of her mental disability. In fact, accused-appellant never denied knowledge of such fact. Thus, because of the presence of this qualifying circumstance, the imposable penalty is death. However, the passage of Republic Act No. 9346 prohibits the imposition of the death penalty without, nonetheless, declassifying the crime of qualified rape as heinous. Thus, the trial court correctly reduced the penalty from death to *reclusion perpetua,* without eligibility for parole.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Rodolfo Deniega *y* Espinosa assailing the Decision[1] of the Court of Appeals (*CA*), dated September 27, 2013, in CA-G.R. CR-H.C. No. 05348, which affirmed *in toto* the November 15, 2011 Decision[2] of the Regional Trial Court (*RTC*) of San Pedro, Laguna, Branch 31, in Criminal Case No. 6185-SPL, finding accused-appellant guilty of the crime of statutory rape and imposing upon him the penalty of *reclusion perpetua* without eligibility for parole and ordering him to pay the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

---

[1] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Florito S. Macalino and Pedro B. Corales, *rollo*, pp. 2-12.

[2] Penned by Judge Sonia T. Yu-Casano, CA *rollo*, pp. 44-51.

The antecedents are as follows:

AAA[3] was a young lass suffering from mental retardation. Around 7 o'clock in the evening of May 2, 2007, AAA who, was then sixteen years old[4] but with a mental capacity of a six (6)-year-old child, went out of their house with some neighbors to watch a basketball game in a nearby basketball court. Upon returning home at approximately 11 o'clock in the evening of the same date, BBB, AAA's mother noticed that the latter's pants were wet. When BBB asked AAA what caused the wetting of her pants, the latter simply dismissed her mother's query and said that it was nothing (*wala lang*). Prompted by suspicion, BBB asked AAA to remove her pants, thereupon, she smelled her underwear which emitted the scent of semen. When quizzed by her mother, AAA eventually admitted that herein accused-appellant, whom she calls Dodong, and who was known to them as a delivery boy in their neighborhood, invited her to go to another basketball court where they could talk with each other but, instead, upon arriving at the said place, he undressed her and made her lie down. Upon acquiring such information, BBB put AAA's underwear in a plastic bag and immediately reported the incident to the *barangay* authorities. AAA later revealed that, at the said basketball court, accused-appellant undressed her, made her lie down, removed his pants and underwear, went on top of her, inserted his penis in her vagina and made "up-and-down" movements." The *barangay* authorities, with the help of some police officers, then proceeded to arrest accused-appellant who was then found in a neighbor's house. At the time of his apprehension, accused-appellant was very drunk. Thus, the authorities waited until the next morning for him to become sober before interrogating him. Upon questioning by the authorities, accused-appellant admitted in front of his employer and BBB that he had sex with AAA and that he loves AAA and he offered to marry her. He also requested BBB and the *barangay* authorities not to file a case against him. BBB, however, refused accused-appellant's offer and request. Instead, she brought AAA to a doctor in Camp Vicente Lim in Calamba,

---

[3] The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), the name, address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

[4] See AAA's Certificate of Live Birth, Exhibit "D", records, p. 8.

Laguna for medical examination. Subsequently, a criminal complaint for rape was filed against accused-appellant.[5]

In an Amended Information dated July 9, 2007, accused was charged with the crime of statutory rape before the RTC of San Pedro, Laguna, as follows:

> The undersigned Assistant Provincial Prosecutor of Laguna accuses Rodolfo Deniega @ "DONG" of the crime of Statutory Rape in relation to Republic Act No. 7610, as follows:
>
> That on or about May 2, 2007, in the Municipality of San Pedro, Province of Laguna, Philippines, within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, have carnal knowledge with a minor (16 years old) [AAA], whose mental age is only six (6) years old. Said carnal knowledge with the said [AAA] is detrimental to her normal growth and development.
>
> That accused knew fully well that the said [AAA] is suffering from mental disability and/or disorder.
>
> CONTRARY TO LAW.[6]

Accused-appellant was arraigned on August 14, 2007 where he pleaded not guilty.[7]

In his defense, accused-appellant denied the allegations of the prosecution and also raised the defense of alibi. He contended that between the hours of 8 o'clock in the morning and 12 o'clock midnight of May 2, 2007, he busied himself by painting the house of a neighbor, then he went to GMA Cavite to have his electric fan repaired and, subsequently, had a drinking session with his friend at the latter's house. He also admitted that he and the victim were residing at the same place and, at the time of the incident, he has known the victim for one month.

---

[5] See TSN, October 10, 2007, November 14, 2007, and April 30, 2008.

[6] Records, p. 22.

[7] See Certificate of Arraignment, *id.* at 33.

Pre-trial was conducted on September 12, 2007.[8] Thereafter, trial ensued.

On November 15, 2011, the RTC rendered its Decision finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

> WHEREFORE, the court finds the accused Rodolfo Deniega y Espinosa GUILTY beyond reasonable doubt of statutory rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.
>
> The accused is ordered to pay the victim the following sums: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damage.
>
> SO ORDERED.[9]

The RTC held that the prosecution was able to establish through clinical and testimonial evidence that AAA is suffering from moderate mental retardation, with an IQ of 43 and with a mental age of a six-year-old child. The trial court also noted that, as admitted by accused-appellant, he knew of the condition of the victim. The RTC ruled that the prosecution was able to prove beyond reasonable doubt that accused-appellant had sexual intercourse with the victim. The RTC gave full credence to the testimony of AAA holding that she testified on the rape that happened to her in a straightforward and categorical manner. The trial court did not give weight to accused-appellant's defense of alibi because the place where he claims to be at the time of the rape is just three streets away from the scene of the crime, hence, it is not physically impossible for him to be at the said scene at the time of the commission of the rape. The RTC also noted that accused-appellant failed to account for his whereabouts between 8 o'clock and 10 o'clock in the evening of May 2, 2007, which is the approximate time that AAA was raped. The RTC further held that AAA positively identified accused-appellant as the one who raped her.

---

[8] See Pre-Trial Order, *id*. at 45-46.

[9] Records, p. 191.

Accused-appellant appealed the RTC Decision with the CA.[10]

On September 27, 2013, the CA promulgated its assailed Decision affirming the judgment of the RTC *in toto*.

The CA held, among others, that: the observation of the trial judge, coupled with the evidence of the prosecution, confirms the mental retardation of the victim; AAA's narration of the rape incident is consistent; and accused-appellant's denial is unsubstantiated, thus, cannot overcome the categorical testimony of the victim.

On October 10, 2013, accused-appellant, through counsel, filed a Notice of Appeal[11] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution[12] dated October 30, 2013, the CA gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to elevate the records of the case to this Court.

Hence, this appeal was instituted.

In a Resolution[13] dated July 7, 2014, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation and Motion[14] dated September 4, 2014, the Office of the Solicitor General (*OSG*) prayed that it be excused from filing a supplemental brief because it had already adequately addressed in its brief filed before the CA all the issues and arguments raised by accused-appellant in his brief.

In the same manner, accused-appellant filed a Manifestation[15] (in Lieu of Supplemental Brief) dated September 10, 2014,

---

[10] See Notice of Appeal, *id*. at 194.

[11] CA *rollo*, pp. 143-145.

[12] *Id*. at 147.

[13] *Rollo*, p. 18.

[14] *Id*. at 22-24.

[15] *Id*. at 25-29.

indicating that he no longer intends to file a supplemental brief and is adopting his brief, which was filed with the CA, as his supplemental brief had adequately discussed all the matters pertinent to his defense.

In his Brief, accused-appellant contends that he was wrongly convicted because the prosecution failed to prove his guilt beyond reasonable doubt. He questions the credibility of the victim and insists that the trial court erred in not giving due consideration to his defense of alibi.

The appeal lacks merit.The Court finds no cogent reason to reverse accused-appellant's conviction.

Accused-appellant was charged with statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code (*RPC*), as amended by Republic Act No. 8353[16] (*RA 8353*), in relation to Republic Act No. 7610[17] (*RA 7610*).

The pertinent provisions of Articles 266-A of the RPC, as amended, provide:

> Art. 266-A *Rape; When And How Rape is Committed*
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
> b) When the offended party is deprived of reason or otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> x x x x x x x x x

Statutory rape is committed when: (1) the offended party is under twelve years of age; and (2) the accused has carnal

---

[16] Anti-Rape Law of 1997.

[17] *Special Protection of Children Against Abuse, Exploitation and Discrimination Act.*

knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority.[18] It is enough that the age of the victim is proven and that there was sexual intercourse.[19]

This Court has consistently held that rape under Article 266-A(1)(d) of the Revised Penal Code, as amended, is termed statutory rape as it departs from the usual modes of committing rape.[20] What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old.[21] Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[22] The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.[23]

It is also a settled rule that sexual intercourse with a woman who is a mental retardate, with a mental age below 12 years old, constitutes statutory rape.[24] In *People v. Quintos*,[25] this Court held that if a mentally-retarded or intellectually-disabled person whose mental age is less than 12 years is raped, the rape is considered committed under paragraph 1(d) and not paragraph 1(b), Article 266-A of the RPC. In holding as such, this Court differentiated the term "mentally-retarded" or

---

[18] *People v. Gutierrez*, G.R. No. 208007, April 2, 2014, 720 SCRA 607, 613.

[19] *Id*.

[20] *People v. Teodoro*, 622 Phil. 328, 337 (2009); *People v. Vergara*, 24 Phil. 702, 708 (2014); *People v. Gutierrez, supra* note 18.

[21] *Id*.

[22] *Id*.

[23] *Id.*

[24] *People v. Bangsoy*, G.R. No. 204047, January 13, 2016, 780 SCRA 564, 576; *People v. Castro*, 653 Phil. 471, 480 (2010).

[25] G.R. No. 199402, November 12, 2014, 740 SCRA 179.

"intellectually disabled" from the terms "deprived of reason" and "demented" as used under Article 266-A, paragraphs 1(b) and 1(d) of the RPC. The Court ruled that:

x x x x x x x x x

The term, "deprived of reason," is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning and perception of reality and, therefore, his or her capacity to resist, make decisions, and give consent.

The term, "demented," refers to a person who suffers from a mental condition called dementia. Dementia refers to the deterioration or loss of mental functions such as memory, learning, speaking, and social condition, which impairs one's independence in everyday activities.

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. **Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.**

x x x x x x x x x[26]

In the present case, the Information alleged that the victim, at the time of the commission of the crime, was 16 years old but with a mental age of a 6-year-old child. The prosecution was able to establish these facts through AAA's Birth Certificate,[27] Clinical Abstract prepared by a medical doctor who is a psychiatrist from the National Center for Mental Health,[28] as well as the testimonies of the said doctor[29] and the victim's mother, BBB.[30]

In the present appeal, accused-appellant's main line of argument is anchored on his attack on the credibility of the victim, AAA. He posits that AAA's mental state profoundly affects her perception of reality causing her to forget things or details. Accused-appellant also claims that AAA has a very limited understanding of her choices and actions and their consequences and is prone to making up and telling stories, thus, putting into question her credibility as a witness.

Both the RTC and the CA, however, found AAA's testimony, that accused-appellant had sexual intercourse with her, to be steadfast, unwavering and consistent, and the Court finds no reason to disturb this finding. Thus, in *People v. Pareja*,[31] this Court reiterated the established rule that:

x x x x x x x x x

When the issue of credibility of witnesses is presented before this Court, we follow certain guidelines that have over time been established in jurisprudence. In *People v. Sanchez* (G.R. No. 197815, February 8, 2012, 665 SCRA 639, 643), we enumerated them as follows:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position

---

[26] *People v. Quintos, supra,* at 201-202. (Emphasis ours).

[27] *Supra* note 4.

[28] Exhibit "F", records, pp. 18-21.

[29] See TSN, January 30, 2008, pp. 6-8.

[30] See TSN, October 10, 2007, p. 6.

[31] 724 Phil. 759 (2014).

in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC. (Citations omitted)

The recognized rule in this jurisdiction is that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts–and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court." While there are recognized exceptions to the rule, this Court has found no substantial reason to overturn the identical conclusions of the trial and appellate courts on the matter of AAA's credibility.

x x x x x x x x x[32]

In the present case, it is true that based on the medical and psychiatric evaluation of AAA, she has moderate mental retardation and that she has the mental age of a six-year-old child. Accused-appellant makes much of this fact to discredit the testimony of AAA. This Court has, nonetheless, held that competence and credibility of mentally deficient rape victims as witnesses have been upheld where it is shown that they can communicate their ordeal capably and consistently.[33] Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered

---

[32] *People v. Pareja, supra,* at 773.

[33] *People v. Caoile*, 710 Phil. 564, 576 (2013).

such crime at the hands of the accused.[34] The basic rule is that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape.[35]

What makes the case stronger for the prosecution is that the testimony of AAA is corroborated by the medical findings of the presence of a "deep healing laceration" in her hymen which was caused by a blunt object.[36] Such medico-legal findings bolsters the prosecution's testimonial evidence. Together, these pieces of evidence produce a moral certainty that accused-appellant indeed raped the victim.

Accused-appellant also questions AAA's credibility by contending that it is very hard to believe that no one could have seen or noticed him having sexual intercourse with AAA in the nearby basketball court, considering that AAA herself testified that the said basketball court, was near the one where people were watching the ongoing game.

The Court is not persuaded. There is no evidence to show that there were people present at the basketball court where the crime was committed. Moreover, it is probable that people did not notice accused-appellant having sexual intercourse with AAA because there was then an ongoing basketball game at another court and the attention of the persons present were directed at the said game. Besides, as testified by the victim, it only took a minute for accused-appellant to consummate his carnal desire, after which they immediately went back.[37] In any case, as correctly cited by the OSG, this Court has held that lust is no respecter of time and place and that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where

---

[34] *Id*.

[35] *People v. Quintos, supra* note 25, at 192.

[36] See Exhibit "E", records, p. 7; TSN, March 18, 2009, p. 5.

[37] See TSN, April 30, 2008, pp. 4-5.

there are other occupants and even in the same room where other members of the family are also sleeping.[38]

Aside from interposing the defense of denial, accused-appellant also argues that the trial court erred in giving scant consideration of his defense of alibi, especially of the fact that given the state of intoxication that he was found in at the time of the said incident, it would be physically impossible for him to have committed the crime charged. Countless times, this Court has declared that alibi is an inherently weak defense. Unless supported by clear and convincing evidence, it cannot prevail over the positive declaration of a victim who, in a natural and straightforward manner, convincingly identifies the accused-appellant.[39] Positive identification, where consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over denial.[40] On the other hand, denial — if not substantiated by clear and convincing evidence — is negative, self-serving and undeserving of any weight in law.[41] In the present case, the OSG correctly echoed the trial court's observation that accused appellant failed to account for his whereabouts between 8 o'clock in the evening and 10 o'clock of the same night, which is the approximate time that AAA was raped. Moreover, the place where the crime was committed was a mere three streets away from where accused-appellant and his friend were having a drinking session. This leads to the conclusion that it is not impossible for accused-appellant to be at the scene of the crime at the approximate time that it was committed, after which, he would still have enough time to go back to their drinking session and get himself extremely drunk.

All told, the prosecution was able to prove, beyond reasonable doubt, that accused-appellant was guilty of raping AAA.

---

[38] *People v. Cabral*, 623 Phil. 809, 815 (2009).

[39] *People v. Bitancor*, 441 Phil. 758, 774 (2002).

[40] *Id*.

[41] *Id*.

Statutory rape, penalized under Article 266-A, paragraph 1(d) of the RPC, as amended, carries the penalty of *reclusion perpetua* under Article 266-B of the same Code, unless attended by qualifying circumstances defined therein, among which is "when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime," in which case the death penalty shall be imposed.

In the instant case, as discussed above, the victim, AAA, is considered below twelve (12) years old at the time of the commission of the crime. Moreover, it was alleged in the Information and established by the prosecution that accused-appellant had knowledge of her mental disability. In fact, accused-appellant never denied knowledge of such fact. Thus, because of the presence of this qualifying circumstance, the imposable penalty is death. However, the passage of Republic Act No. 9346[42] prohibits the imposition of the death penalty without, nonetheless, declassifying the crime of qualified rape as heinous. Thus, the trial court correctly reduced the penalty from death to *reclusion perpetua,* without eligibility for parole.

Anent the award of damages, to conform to this Court's ruling in *People v. Ireneo Jugueta*,[43] which is the prevailing jurisprudence on the matter, the award of damages are modified as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Moreover, also in consonance with prevailing jurisprudence,[44] the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

WHEREFORE, the instant appeal is **DISMISSED**. The September 27, 2013 Decision of the Court of Appeals in CA-

---

[42] *An Act Prohibiting the Imposition of the Death Penalty.*

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

[44] *People v. Jaime Brioso alias "Talap-talap,"* G.R. No. 209344, June 27, 2016.

G.R. CR-H.C. No. 05348 is **AFFIRMED** with the following **MODIFICATIONS**:

1) Accused-appellant is **ORDERED** to **PAY** the increased amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

2) Accused-appellant is additionally **ORDERED** to **PAY** the victim, AAA, interest at the rate of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decison until fully paid.

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

Carpio[*] *(Chairperson), J.,* on wellness leave.

SECOND DIVISION

[G.R. No. 213088. June 28, 2017]

LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB), *petitioner, vs.* **G.V. FLORIDA TRANSPORT, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; LAW ON TRANSPORTATION; LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB); THE LTFRB HAS AMPLE POWER AND DISCRETION TO DECREE OR REFUSE THE CANCELLATION OF A CERTIFICATE OF PUBLIC CONVENIENCE (CPC) ISSUED TO THE OPERATOR AS LONG AS THERE IS EVIDENCE TO SUPPORT ITS

[*] Acting Chairperson, per Special Order No. 2445 dated June 16, 2017.

ACTION.— Section 16(n) of Commonwealth Act. No. 146, otherwise known as the *Public Service Act*, provides: Section 16. *Proceedings of the Commission, upon notice and hearing*. — The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary: x x x Also, Section 5(b) of E.O. 202 states: Sec. 5. Powers and Functions of the Land Transportation Franchising and Regulatory Board. x x x The Court agrees with petitioner that its power to suspend the CPCs issued to public utility vehicles depends on its assessment of the gravity of the violation, the potential and actual harm to the public, and the policy impact of its own actions. In this regard, the Court gives due deference to petitioner's exercise of its sound administrative discretion in applying its special knowledge, experience and expertise to resolve respondent's case. Indeed, the law gives to the LTFRB (previously known, among others, as Public Service Commission or Board of Transportation) ample power and discretion to decree or refuse the cancellation of a certificate of public convenience issued to an operator as long as there is evidence to support its action. As held by this Court in a long line of cases, it was even intimated that, in matters of this nature so long as the action is justified, this Court will not substitute its discretion for that of the regulatory agency which, in this case, is the LTFRB.

2. ID.; ID.; ID.; ID.; PENALTY OF SIX-MONTHS SUSPENSION OF THE OPERATIONS OF RESPONDENT'S 28 CPCs IMPOSED BY THE LTFRB, PROPER; CASE AT BAR.— As to whether or not the penalty imposed by petitioner is reasonable, respondent appears to trivialize the effects of its deliberate and shameless violations of the law. Contrary to its contention, this is not simply a case of one erring bus unit. Instead, the series or combination of violations it has committed with respect to the ill-fated bus is indicative of its design and intent to blatantly and maliciously defy the law and disregard, with impunity, the regulations imposed by petitioner upon all holders of CPCs. Thus, the Court finds nothing irregular in petitioner's imposition of the penalty of six-months suspension of the operations of respondent's 28 CPCs. In other words, petitioner did not commit grave abuse of discretion in imposing the questioned penalty.

3. ID.; ID.; ID.; ID.; ID.; OPERATORS OF PUBLIC UTILITY VEHICLES STERNLY WARNED TO EXERCISE EXTRAORDINARY DILIGENCE IN THE TRANSPORTATION OF PASSENGERS.— [T]he suspension of respondent's CPCs finds relevance in light of the series of accidents met by different bus units owned by different operators in recent events. This serves as a reminder to all operators of public utility vehicles that their franchises and CPCs are mere privileges granted by the government. As such, they are sternly warned that they should always keep in mind that, as common carriers, they bear the responsibility of exercising extraordinary diligence in the transportation of their passengers. Moreover, they should conscientiously comply with the requirements of the law in the conduct of their operations, failing which they shall suffer the consequences of their own actions or inaction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Felipe P. Cruz Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal and setting aside of the Decision[1] of the Court of Appeals (*CA*), dated June 26, 2014 in CA-G.R. SP No. 134772.

The pertinent factual and procedural antecedents of the case are as follows:

Around 7:20 in the morning of February 7, 2014, a vehicular accident occurred at Sitio Paggang, Barangay Talubin, Bontoc, Mountain Province involving a public utility bus coming from Sampaloc, Manila, bound for Poblacion Bontoc and bearing a "G.V. Florida" body mark with License Plate No. TXT-872.

[1] Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang; Annex "A" to Petition, *rollo,* pp. 29-48.

The mishap claimed the lives of fifteen (15) passengers and injured thirty-two (32) others.

An initial investigation report, which came from the Department of Transportation and Communications of the Cordillera Administrative Region (*DOTC-CAR*), showed that based on the records of the Land Transportation Office (*LTO*) and herein petitioner, License Plate No. TXT-872 actually belongs to a different bus owned by and registered under the name of a certain Norberto Cue, Sr. (*Cue*) under Certificate of Public Convenience (*CPC*) Case No. 2007-0407 and bears engine and chassis numbers LX004564 and KN2EAM12PK004452, respectively; and that the bus involved in the accident is not duly authorized to operate as a public transportation.

Thus, on the same day of the accident, herein petitioner, pursuant to its regulatory powers, immediately issued an Order[2] preventively suspending, for a period not exceeding thirty (30) days, the operations of ten (10) buses of Cue under its CPC Case No. 2007-0407, as well as respondent's entire fleet of buses, consisting of two hundred and twenty-eight (228) units, under its twenty-eight (28) CPCs. In the same Order, respondent and Cue were likewise directed to comply with the following:

1. Inspection and determination of road worthiness of the authorized PUB unit of respondents-operators bringing the said buses to the Motor Vehicle Inspection Service (MVIS) of the Land Transportation Office, together with the authorized representatives of the Board;

2. Undergo Road Safety Seminar of respondents-operators' drivers and conductors to be conducted or scheduled by the Board and/or its authorized seminar provider;

3. Compulsory Drug Testing of the respondents-operators' drivers and conductors to be conducted by authorized/accredited agency of the Department of Health and the Land Transportation Office;

4. Submit the Certificates of Registration and latest LTO Official Receipts of the units, including the names of the respective drivers and conductors; and

---

[2] Annex "D" to Petition, *rollo*, pp. 77-86.

5. Submit the video clippings of roadworthiness inspection, Road Safety Seminar and Drug Testing.[3]

Furthermore, respondent and Cue were ordered to show cause why their respective CPCs should not be suspended, canceled or revoked due to the said accident.

Thereafter, in its Incident Report dated February 12, 2014, the DOTC-CAR stated, among others: that the License Plate Number attached to the ill-fated bus was indeed TXT-872, which belongs to a different unit owned by Cue; that the wrecked bus had actual engine and chassis numbers DE12T-601104BD and KTP1011611C,[4] respectively; that, per registration records, the subject bus was registered as "private" on April 4, 2013 with issued License Plate No. UDO 762; and that the registered owner is Dagupan Bus Co., Inc. (*Dagupan Bus*) while the previous owner is herein respondent bus company.

As a result, Dagupan Bus was also ordered to submit an Answer on the DOTC-CAR Incident Report, particularly, to explain why the bus involved in the above accident, which is registered in its name, was sporting the name "G.V. Florida" at the time of the accident.

Subsequently, Dagupan Bus filed its Answer claiming that: it is not the owner of the bus which was involved in the accident; the owner is G.V. Florida; Dagupan Bus entered into a Memorandum of Agreement with G.V. Florida, which, among others, facilitated the exchange of its CPC covering the Cagayan route for the CPC of Florida covering the Bataan route; and the subsequent registration of the subject bus in the name of Dagupan Bus is a mere preparatory act on the part of G.V.

---

[3] *Rollo*, p. 85.

[4] In petitioner's preventive suspension order, it was indicated that, based on the initial investigation and report of the DOTC-CAR, the engine and chassis numbers of the subject bus were 100300120 and RF82140667. However, records show that these numbers were not actually taken from the engine and chassis of the bus but were simply copied from the markings appearing on its body. It appears that these were the engine and chassis numbers of the bus which were not erased when it was rebuilt.

Florida to substitute the old authorized units of Dagupan Bus plying the Cagayan route which are being operated under the abovementioned CPC which has been exchanged with G.V. Florida.

On the other hand, Cue filed his Position Paper contending that: License Plate No. TXT-872 was issued by the LTO to one among ten public utility buses under CPC No. 2007-0407[5] issued to him as operator of the Mountain Province Cable Tours; the application for the extension of the validity of the said CPC is pending with petitioner; the subject CPC, together with all authorized units, had been sold to G.V. Florida in September 2013; and thereafter, Cue completely ceded the operation and maintenance of the subject buses in favor of G.V. Florida.

In its Position Paper, herein respondent alleged that: it, indeed, bought Cue's CPC and the ten public utility buses operating under the said CPC, including the one which bears License Plate No. TXT-872; since Cue's buses were already old and dilapidated, and not wanting to stop its operations to the detriment of the riding public, it replaced these buses with new units using the License Plates attached to the old buses, pending approval by petitioner of the sale and transfer of Cue's CPC in its favor; and it exercised utmost good faith in deciding to dispatch the ill-fated bus notwithstanding the absence of prior adequate compliance with the requirements that will constitute its operation legal.

On March 14, 2014, herein petitioner rendered its Decision canceling Cue's CPC No. 2007-0407 and suspending the operation of respondent's 186 buses under 28 of its CPCs for a period of six (6) months. Pertinent portions of the dispositive portion of the said Decision read as follows:

WHEREFORE, premises considered and by virtue of Commonwealth Act 146 (otherwise known as "The Public Service Law"), as amended, and Executive Order No. 202, the Board hereby ORDERS that:

---

[5] The buses registered under the said CPC were authorized to ply the route Sagada, Bontoc-Manila and vice-versa.

a. The Certificate of Public Convenience of respondent-operator NORBERTO M. Cue, SR. under Case No. 2007-0407, now under the beneficial ownership of respondent-operator G.V. FLORIDA TRANSPORT, INC., be **CANCELLED** and **REVERTED** to the State. Therefore, upon receipt of this Decision, respondent-operator G.V. FLORIDA TRANSPORT, INC. is hereby directed to CEASE and DESIST from operating the Certificate of Public Convenience under Case No. 2007-0407 involving ten (10) authorized units, to wit:

x x x x x x x x x

[b.] Upon finality of this Decision, the above-mentioned for hire plates of respondent-operator NORBERTO M. CUE, SR. are hereby ordered **DESTRUCTED** (sic) and **DESTROYED** prior to their turn over to the **Land Transportation Office (LTO)**.

x x x x x x x x x

c. All existing Certificates of Public Convenience of respondent-operator G.V. FLORIDA TRANSPORT, INC. under case numbers listed under case numbers listed below are hereby **SUSPENDED** for a period of **SIX (6) MONTHS** commencing from March 11, 2014, which is the lapse of the 30-day preventive suspension order issued by this Board, to wit:

x x x x x x x x x

[d.] During the period of suspension of its CPCs and as a condition for the lifting thereof, respondent-operator G.V. FLORIDA TRANSPORT, INC. must comply with the following:

1. All its authorized drivers must secure the National Competency III issued by the Technical Education and Skills Development Authority (TESDA)

2. All its conductors must secure Conductor's License from the Land Transportation Office (LTO);

3. Submit all its authorized units that have not undergone inspection and determination of roadworthiness to the Motor Vehicle Inspection Service of the LTO, together with the authorized representatives of the Board; and

4. Compulsory Drug Testing of all its authorized drivers and conductors to be conducted by the authorized

accredited agency of the Department of Health and the Land Transportation Office at least thirty (30) days before the expiration of its suspension.

[e.] The Show Cause Order issued against respondent-operator **DAGUPAN BUS CO., INC.** is hereby **SET ASIDE.**

The Information Systems Management Division (**ISMD**) is also directed to make proper recording of this Decision for future reference against subject vehicles and respondents-operators. During the period of suspension of its CPCs, respondent-operator G.V. FLORIDA TRANSPORT, INC. is allowed to confirm its authorized units subject to submission of all requirements for confirmation.

The **Law Enforcement Unit of this Board**, the **Land Transportation Office (LTO)**, the **Metro Manila Development Authority (MMDA)**, the **Philippine National Police-Highway Patrol Group (PNP-HPG)**, and other authorized traffic enforcement agencies are hereby ordered to **APPREHEND** and **IMPOUND** the said vehicles, if found operating.

SO ORDERED.[6]

Respondent then filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, with prayer for the issuance of a preliminary mandatory injunction, assailing petitioner's above Decision.

On June 26, 2014, the CA promulgated its questioned Decision, disposing as follows:

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated March 14, 2014 of the Land Transportation Franchising and Regulatory Board is **MODIFIED** as follows:

1. The Order canceling and reverting to the State of the Certificate of Public Convenience of operator Cue under Case No. 2007-0407, under the beneficial ownership of petitioner G.V. Florida Transport, Inc. is **AFFIRMED**;

2. The penalty of suspension for a period of six (6) months against all existing 28 Certificates of Public Convenience of petitioner G.V. Florida, Transport, Inc., is **REVERSED and SET ASIDE**;

---

[6] *Rollo*, pp. 63-72. (Emphasis in the original)

3. The condition set forth in the Decision for the lifting of the penalty of suspension is **DELETED**; and

4. The order to apprehend and impound petitioner G.V. Florida Transport, Inc.'s 186 authorized bus units under the 28 CPCs if found operating is **RECALLED**

Accordingly, petitioner G.V. Florida Transport, Inc. prayer for mandatory injunctive relief is hereby **GRANTED**. The Land Transportation and Franchising Regulatory Board is hereby ordered to immediately **LIFT** the order of suspension and **RETURN** or **CAUSE the RETURN** of the confiscated license plates of petitioner G.V. Florida Transport, Inc.'s 186 authorized bus units under its 28 Certificates of Public Convenience without need of further order from this Court. Said Office is further **DIRECTED** to submit its Compliance within five (5) days from receipt thereof.

SO ORDERED.[7]

Hence, the present petition grounded on a lone issue, to wit:

DOES THE LTFRB HAVE THE POWER TO SUSPEND THE FLEET OF A PUBLIC UTILITY THAT VIOLATES THE LAW, TO THE DAMAGE OF THE PUBLIC?[8]

The main issue brought before this Court is whether or not petitioner is justified in suspending respondent's 28 CPCs for a period of six (6) months. In other words, is the suspension within the powers of the LTFRB to impose and is it reasonable?

Petitioner contends that it is vested by law with jurisdiction to regulate the operation of public utilities; that under Section 5(b) of Executive Order No. 202 (*E.O. 202*),[9] it is authorized "[t]o issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor;"

---

[7] *Id*. at 47-48. (Emphasis in the original)

[8] *Id*. at 16.

[9] Creating the Land Transportation Franchising and Regulatory Board, which was issued on June 19, 1987.

and that petitioner's authority to impose the penalty of suspension of CPCs of bus companies found to have committed violations of the law is broad and is consistent with its mandate and regulatory capability.

On the other hand, respondent, in its Comment to the present Petition, contends that the suspension of its 28 CPCs is tantamount to an outright confiscation of private property without due process of law; and that petitioner cannot simply ignore respondent's property rights on the pretext of promoting public safety. Respondent insists that the penalty imposed by petitioner is not commensurate to the infraction it had committed.

The Court rules in favor of petitioner.

Section 16(n) of Commonwealth Act. No. 146, otherwise known as the *Public Service Act*, provides:

> Section 16. *Proceedings of the Commission, upon notice and hearing*.— The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:
>
> x x x x x x x x x
>
> (n) To suspend or revoke any certificate issued under the provisions of this Act whenever the holder thereof has violated or willfully and contumaciously refused to comply with any order rule or regulation of the Commission or any provision of this Act: Provided, That the Commission, for good cause, may prior to the hearing suspend for a period not to exceed thirty days any certificate or the exercise of any right or authority issued or granted under this Act by order of the Commission, whenever such step shall in the judgment of the Commission be necessary to avoid serious and irreparable damage or inconvenience to the public or to private interests.
>
> x x x x x x x x x

Also, Section 5(b) of E.O. 202 states:

> Sec. 5. Powers and Functions of the Land Transportation Franchising and Regulatory Board. The Board shall have the following powers and functions:

x x x x x x x x x

b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor;

x x x x x x x x x

In the present case, respondent is guilty of several violations of the law, to wit: lack of petitioner's approval of the sale and transfer of the CPC which respondent bought from Cue; operating the ill-fated bus under its name when the same is registered under the name of Dagupan Bus Co., Inc.; attaching a vehicle license plate to the ill-fated bus when such plate belongs to a different bus owned by Cue; and operating the subject bus under the authority of a different CPC. What makes matters worse is that respondent knowingly and blatantly committed these violations. How then can respondent claim good faith under these circumstances?

Respondent, nonetheless, insists that it is unreasonable for petitioner to suspend the operation of 186 buses covered by its 28 CPCs, considering that only one bus unit, covered by a single CPC, was involved in the subject accident.

The Court is not persuaded. It bears to note that the suspension of respondent's 28 CPCs is not only because of the findings of petitioner that the ill-fated bus was not roadworthy.[10] Rather, and more importantly, the suspension of the 28 CPCs was also brought about by respondent's wanton disregard and obstinate defiance of the regulations issued by petitioner, which is tantamount to a willful and contumacious refusal to comply with the requirements of law or of the orders, rules or regulations issued by petitioner and which is punishable, under the law, by suspension or revocation of any of its CPCs.

---

[10] In the assailed Decision of petitioner, it adopted the findings of the investigating police officers that the cause of the accident was the malfunctioning of the brake system of the bus, coupled with driver's error; see *rollo*, p. 62.

The Court agrees with petitioner that its power to suspend the CPCs issued to public utility vehicles depends on its assessment of the gravity of the violation, the potential and actual harm to the public, and the policy impact of its own actions. In this regard, the Court gives due deference to petitioner's exercise of its sound administrative discretion in applying its special knowledge, experience and expertise to resolve respondent's case.

Indeed, the law gives to the LTFRB (previously known, among others, as Public Service Commission or Board of Transportation) ample power and discretion to decree or refuse the cancellation of a certificate of public convenience issued to an operator as long as there is evidence to support its action.[11] As held by this Court in a long line of cases,[12] it was even intimated that, in matters of this nature so long as the action is justified, this Court will not substitute its discretion for that of the regulatory agency which, in this case, is the LTFRB.

Moreover, the Court finds the ruling in *Rizal Light & Ice Co., Inc. v. The Municipality of Morong, Rizal and The Public Service Commission,*[13] instructive, to wit:

x x x x x x x x x

It should be observed that Section 16(n) of Commonwealth Act No. 146, as amended, confers upon the Commission ample power and discretion to order the cancellation and revocation of any certificate of public convenience issued to an operator who has violated, or has willfully and contumaciously refused to comply with, any order, rule or regulation of the Commission or any provision of law. What matters is that there is evidence to support the action of the Commission. In the instant case, as shown by the evidence, the contumacious refusal

---

[11] *Pantranco South Express, Inc. v. Board of Transportation, et al.*, 269 Phil. 619, 628 (1990).

[12] *Id.*, citing *Javier, et al. v. De Leon, et al.*, 109 Phil. 751 (1960); *Santiago Ice Plant Co. v. Lahoz*, 87 Phil. 221 (1950); *Raymundo Transportation Co. v. Cedra*, 99 Phil. 99 (1956); *Manila Yellow Taxicab Co., Inc. v. Castelo*, 108 Phil. 394 (1960).

[13] 134 Phil. 232 (1968).

of the petitioner since 1954 to comply with the directives, rules and regulations of the Commission, its violation of the conditions of its certificate and its incapability to comply with its commitment as shown by its inadequate service, were the circumstances that warranted the action of the Commission in not merely imposing a fine but in revoking altogether petitioner's certificate. To allow petitioner to continue its operation would be to sacrifice public interest and convenience in favor of private interest.

> A grant of a certificate of public convenience confers no property rights but is a mere license or privilege, and such privilege is forfeited when the grantee fails to comply with his commitments behind which lies the paramount interest of the public, for public necessity cannot be made to wait, nor sacrificed for private convenience. (Collector of Internal Revenue v. Estate of F. P. Buan, et al., L-11438 and Santiago Sambrano, et al. v. PSC, et al., L-11439 & L-11542-46, July 31, 1958)
>
> (T)he Public Service Commission, . . . has the power to specify and define the terms and conditions upon which the public utility shall be operated, and to make reasonable rules and regulations for its operation and the compensation which the utility shall receive for its services to the public, and for any failure to comply with such rules and regulations or the violation of any of the terms and conditions for which the license was granted, the Commission has ample power to enforce the provisions of the license or *even to revoke it, for any failure or neglect to comply with any of its terms and provisions. x x x*
>
> x x x x x x x x x[14]

Respondent likewise contends that, in suspending its 28 CPCs, the LTFRB acted in reckless disregard of the property rights of respondent as a franchise holder, considering that it has put in substantial investments amounting to hundreds of millions in running its operations. In this regard, the Court's ruling in the case of *Luque v. Villegas*[15] is *apropos*:

---

[14] *Rizal Light & Ice Co., Inc. v. The Municipality of Morong, Rizal and the Public Service Commission, supra,* at 248-249.

[15] 141 Phil. 108 (1969).

x x x x x x x x x

Contending that they possess valid and subsisting certificates of public convenience, the petitioning public services aver that they acquired a vested right to operate their public utility vehicles to and from Manila as appearing in their said respective certificates of public convenience.

Petitioner's argument pales on the face of the fact that the very nature of a certificate of public convenience is at cross purposes with the concept of vested rights. To this day, the accepted view, at least insofar as the State is concerned, is that "a certificate of public convenience constitutes neither a franchise nor a contract, confers no property right, and is a mere license or privilege." The holder of such certificate does not acquire a property right in the route covered thereby. Nor does it confer upon the holder any proprietary right or interest of franchise in the public highways. Revocation of this certificate deprives him of no vested right. Little reflection is necessary to show that the certificate of public convenience is granted with so many strings attached. New and additional burdens, alteration of the certificate, and even revocation or annulment thereof is reserved to the State.

We need but add that the Public Service Commission, a government agency vested by law with "jurisdiction, supervision, and control over all public services and their franchises, equipment, and other properties" is empowered, upon proper notice and hearing, amongst others: (1) "[t]o amend, modify or revoke at any time a certificate issued under the provisions of this Act [Commonwealth Act 146, as amended], whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed"; and (2) "[t]o suspend or revoke any certificate issued under the provisions of this Act whenever the holder thereof has violated or wilfully and contumaciously refused to comply with any order, rule or regulation of the Commission or any provision of this Act: *Provided*, That the Commission, for good cause, may prior to the hearing suspend for a period not to exceed thirty days any certificate or the exercise of any right or authority issued or granted under this Act by order of the Commission, whenever such step shall in the judgment of the Commission be necessary to avoid serious and irreparable damage or inconvenience to the public or to private interests."

Jurisprudence echoes the rule that the Commission is authorized to make reasonable rules and regulations for the operation of public

services and to enforce them. In reality, all certificates of public convenience issued are subject to the condition that all public services "shall observe and comply [with] ... all the rules and regulations of the Commission relative to" the service. To further emphasize the control imposed on public services, before any public service can "adopt, maintain, or apply practices or measures, rules, or regulations to which the public shall be subject in its relation with the public service," the Commission's approval must first be had.

And more. Public services must also reckon with provincial resolutions and municipal ordinances relating to the operation of public utilities within the province or municipality concerned. The Commission can require compliance with these provincial resolutions or municipal ordinances.

Illustrative of the lack of "absolute, complete, and unconditional" right on the part of public services to operate because of the delimitations and restrictions which circumscribe the privilege afforded a certificate of public convenience is the following from the early (March 31, 1915) decision of this Court in *Fisher vs. Yangco Steamship Company*, 31 Phil. 1, 18-19:

> Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. Their business is, therefore, affected with a public interest, and is subject of public regulation. (New Jersey Steam Nav. Co. vs. Merchants Banks, 6 How. 344, 382; Munn vs. Illinois, 94 U.S. 113, 130.) Indeed, this right of regulation is so far beyond question that it is well settled that the power of the state to exercise legislative control over railroad companies and other carriers 'in all respects necessary to protect the public against danger, injustice and oppression' may be exercised through boards of commissioners. (New York, etc. R. Co. vs. Bristol, 151 U.S. 556, 571; Connecticut, etc. R. Co. vs. Woodruff, 153 U.S. 689.).
>
> x x x x x x x x x
>
> . . . . The right to enter the public employment as a common carrier and to offer one's services to the public for hire does not carry with it the right to conduct that business as one pleases, without regard to the interests of the public and free from such reasonable and just regulations as may be prescribed for the protection of the public from the reckless or careless indifference of the carrier as to the public welfare and for the prevention of unjust and unreasonable discrimination of any kind whatsoever

> in the performance of the carrier's duties as a servant of the public.
>
> Business of certain kinds, including the business of a common carrier, holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation. (Budd vs. New York, 143 U.S. 517, 533.) When private property is "affected with a public interest it ceases to be *juris privati* only." Property becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. "When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to control." (Munn vs. Illinois, 94 U.S. 113; Georgia R. & Bkg. Co. vs. Smith, 128 U.S. 174; Budd vs. New York, 143 U.S. 517; Louisville, etc. Ry. Co. vs. Kentucky, 161 U.S. 677, 695.).

The foregoing, without more, rejects the vested rights theory espoused by petitioning bus operators.

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

Neither is the Court convinced by respondent's contention that the authority given to petitioner, under the abovequoted Section 16(n) of the Public Service Act does not mean that petitioner is given the power to suspend the entire operations of a transport company. Respondent must be reminded that, as quoted above, the law clearly states that petitioner has the power "[t]o suspend or revoke **any** certificate issued under the provisions of [the Public Service Act] **whenever the holder thereof has violated or willfully and contumaciously refused to comply with any order rule or regulation of the Commission or any provision of this Act** x x x" This Court has held that when the context so indicates, the word "any" may be construed to mean, and indeed it has been frequently used in its enlarged and plural sense, as meaning "all," "all or every," "each," "each one of

---

[16] *Luque v. Villegas, supra,* at 119-123.

all," "every" without limitation; indefinite number or quantity, an indeterminate unit or number of units out of many or all, one or more as the case may be, several, some.[17] Thus, in the same vein, the *Merriam-Webster Dictionary* defines the word "any" as "one, some, or all indiscriminately of whatever quantity"; "used to indicate a maximum or whole"; "unmeasured or unlimited in amount, number, or extent."[18] Hence, under the above definitions, petitioner undoubtedly wields authority, under the law, to suspend not only one but all of respondent's CPCs if warranted, which is proven to be the case here.

As to whether or not the penalty imposed by petitioner is reasonable, respondent appears to trivialize the effects of its deliberate and shameless violations of the law. Contrary to its contention, this is not simply a case of one erring bus unit. Instead, the series or combination of violations it has committed with respect to the ill-fated bus is indicative of its design and intent to blatantly and maliciously defy the law and disregard, with impunity, the regulations imposed by petitioner upon all holders of CPCs. Thus, the Court finds nothing irregular in petitioner's imposition of the penalty of six-months suspension of the operations of respondent's 28 CPCs. In other words, petitioner did not commit grave abuse of discretion in imposing the questioned penalty.

Lastly, the suspension of respondent's CPCs finds relevance in light of the series of accidents met by different bus units owned by different operators in recent events. This serves as a reminder to all operators of public utility vehicles that their franchises and CPCs are mere privileges granted by the government. As such, they are sternly warned that they should always keep in mind that, as common carriers, they bear the responsibility of exercising extraordinary diligence in the transportation of their passengers. Moreover, they should

---

[17] *Gatchalian, etc. v. Commission on Elections*, 146 Phil. 435, 442-443 (1970).

[18] Webster's 3rd New International Dictionary of the English Language, 1993 Copyright, p. 97.

conscientiously comply with the requirements of the law in the conduct of their operations, failing which they shall suffer the consequences of their own actions or inaction.

WHEREFORE, the instant petition is **GRANTED.** The Decision of the Court of Appeals, dated June 26, 2014 in CA-G.R. SP No. 134772, is **REVERSED** and **SET ASIDE.** The March 14, 2014 Decision of the Land Transportation Franchising and Regulatory Board is **REINSTATED.**

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

Carpio[*] *(Chairperson), J.,* on wellness leave.

SECOND DIVISION

[G.R. No. 214500. June 28, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHELLE DELA CRUZ,**[*] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT; ELEMENTS.— The crime of illegal recruitment is defined and penalized under Sections 6 and 7 of Republic Act (*R.A.*) No. 8042, or the *Migrant Workers and Overseas Filipinos Act of 1995*, x x x Thus, in order to hold a person liable for illegal recruitment, the following elements must concur: (1) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article

---

[*] Acting Chairperson, per Special Order No. 2445 dated June 16, 2018.

[*] Also spelled "dela Cruz" in some parts of the records.

13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of Republic Act No. 8042) and (2) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers.

2. ID.; ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In the case of *illegal recruitment in large scale*, as in this case, a third element is required: that the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group. In the instant case, appellant committed the acts enumerated in Section 6 of R.A. 8042. As testified to by Aguilar-Uy, Reformado and Lavaro, appellant gave them an impression that she is capable of sending them to South Korea as domestic helpers. The testimonial evidence presented by the prosecution clearly shows that, in consideration of a promise of overseas employment, appellant received monies from private complainants. Such acts were accurately described in the testimonies of the prosecution witnesses, x x x Thus, considering the foregoing, we can conclude that all three elements of illegal recruitment in large scale are present in the instant case. To recapitulate: ***First,*** appellant engaged in recruitment when she represented herself to be capable of deploying workers to South Korea upon submission of the pertinent documents and payment of the required fees; ***Second*****,** all three (3) private complainants positively identified appellant as the person who promised them employment as domestic helpers in Korea for a fee; and ***Third*****,** Rosalina Rosales of the Licensing Division of the POEA, testified that as per Certification issued by Noriel Devanadera, Director IV, Licensing and Regulation Office, appellant is not licensed or authorized to recruit workers for overseas employment. Clearly, the existence of the offense of illegal recruitment in large scale was duly proved by the prosecution.

3. ID.; ID.; ID.; IMPOSABLE PENALTY.— The crime of illegal recruitment is penalized under Sections 6 and 7 of RA 8042, or the *Migrant Workers and Overseas Filipinos Act of 1995,* x x x As the crime was committed in large scale, it is an offense involving economic sabotage and is punishable by life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. The trial court, thus, aptly imposed the penalty of life imprisonment and a fine of ₱500,000.00.

4. ID.; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— The elements of estafa by means of deceit are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.

5. ID.; ID.; ID.; A PERSON MAY BE CHARGED WITH AND CONVICTED FOR BOTH ILLEGAL RECRUITMENT AND ESTAFA; RATIONALE.— It is well-established in jurisprudence that a person may be charged and convicted for both illegal recruitment and estafa. The reason therefor is not hard to discern: illegal recruitment is *malum prohibitum*, while estafa is *mala in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such intent is imperative. Estafa under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S OBSERVATION AS TO THE TESTIMONIES OF WITNESSES ARE ACCORDED GREAT RESPECT, IF NOT CONCLUSIVE EFFECT, MOST ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.— Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the Court of Appeals, as in this case. The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination. In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.

7. ID.; ID.; ID.; AN AFFIRMATIVE TESTIMONY IS FAR STRONGER THAN A NEGATIVE TESTIMONY ESPECIALLY WHEN THE FORMER COMES FROM THE MOUTH OF A CREDIBLE WITNESS.— An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated and concocted.

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

PERALTA, *J.*:

Before this Court is an appeal from the Decision[1] dated July 2, 2013 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 04935. The CA affirmed the Decision[2] dated October 21, 2010 of the Regional Trial Court (*RTC*) of Makati City in Criminal Cases Nos. 05-412 to 415, which convicted appellant Michelle Dela Cruz of illegal recruitment in large scale and estafa.

Appellant was charged with illegal recruitment in large scale and three (3) counts of estafa under Article 315, paragraph 2(a) of the Revised Penal Code. The Informations against appellant read:

Criminal Case No. 05-412 for Illegal Recruitment (Large Scale):

That in or about and sometime from September 21, 2004 to February 18, 2005, in the City of Makati, Philippines and within the jurisdiction

---

[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba, concurring; *rollo*, pp. 2-16.

[2] CA *rollo*, pp. 39-46.

of this Honorable Court, the above-named accused not being authorized by the POEA of the Department of Labor and Employment to recruit workers for overseas employment, did then and there willfully, unlawfully and feloniously promise and recruit the following complainants, to wit:

ARMELY AGUILAR UY,
SHERYL AGUILAR REFORMADO
& ADONA LUNA QUINES LAVARO

for an overseas job placement abroad and in consideration of said promise, said complainants paid and delivered the total amount of Php300,000.00 as processing fees of their papers, but despite said promise, accused failed to deploy complainants and despite demand to reimburse/return the amount which complainants paid as processing fees, accused did then and there refuse and fail to reimburse/return to said complainants the aforesaid amount, thus in large scale amounting to economic sabotage, in violation of the aforecited law.

Contrary to law."[3]

Criminal Case No. 05-413 for Estafa under Art. 315, par. 2(a) of the RPC.

That in or about and sometime from September 21, 2004 to February 18, 2005, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud complainant ARMELY AGUILAR UY in the following manner, to wit: The said accused by means of false manifestation and fraudulent representation prior to or simultaneously with the commission of the fraud which she made to the complainant to the effect that she have a power and capacity to recruit workers for the employment of complainant as Domestic Helper in Korea and could facilitate the necessary papers to meet the requirements and by means of other deceit of similar import induced and succeeded in inducing complainant to give and deliver in the total amount of Php100,000.00, the accused knowing fully well that the same was false and fraudulent and was made only to obtain, as in fact the accused obtained the amount of Php100,000.00, which the accused applied and used for her own personal use and benefit, to the damage and prejudice of the said complainant ARMELY AGUILAR UY.

---

[3] Records, pp. 2-3.

Contrary to law.[4]

Criminal Case No. 05-414 for Estafa under Art. 315, par. 2(a) of the RPC.

That in or about and sometime from September 21, 2004 to February 18, 2005, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud complainant ADONA LUNA QUINES LAVARO in the following manner, to wit: The said accused by means of false manifestation and fraudulent representation prior to or simultaneously with the commission of the fraud which she made to the complainant to the effect that she have a power and capacity to recruit workers for the employment of complainant as Domestic Helper in Korea and could facilitate the necessary papers to meet the requirements and by means of other deceit of similar import induced and succeeded in inducing complainant to give and deliver in the total amount of Php100,000.00, the accused knowing fully well that the same was false and fraudulent and was made only to obtain, as in fact the accused obtained the amount of Php100,000.00, which the accused applied and used for her own personal use and benefit, to the damage and prejudice of the said complainant ADONA LUNA QUINES LAVARO.

Contrary to law.[5]

Criminal Case No. 05-415 for Estafa under Art. 315, par. 2(a) of the RPC.

That in or about and sometime from September 21, 2004 to February 18, 2005, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously defraud complainant SHERYL AGUILAR REFORMADO in the following manner, to wit: The said accused by means of false manifestation and fraudulent representation prior to or simultaneously with the commission of the fraud which she made to the complainant to the effect that she have a power and capacity to recruit workers for the employment of complainant as Domestic Helper in Korea and could facilitate the necessary papers to meet the requirements and by means of other

---

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

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

deceit of similar import induced and succeeded in inducing complainant to give and deliver in the total amount of Php100,000.00, the accused knowing fully well that the same was false and fraudulent and was made only to obtain, as in fact the accused obtained the amount of Php100,000.00, which the accused applied and used for her own personal use and benefit, to the damage and prejudice of the said complainant SHERYL AGUILAR REFORMADO.

Contrary to law.[6]

The prosecution presented the three (3) private complainants as witnesses to prove the crime of Illegal Recruitment on Large Scale, namely: Armely Aguilar-Uy (*Aguilar-Uy*), Sheryl Reformado (*Reformado*), Adona Lavaro (*Lavaro*), and Rosalina Rosales (*Rosales*) from the Philippine Overseas Employment Administration (*POEA*).

Testimony of first private complainant Armely Aguilar-Uy:

Private respondent Aguilar-Uy testified that she and appellant were introduced to each other by a certain Maggie Dela Cruz. Aguilar-Uy claimed that appellant recruited her to work in South Korea as domestic helper. She was told that she will receive ₱50,000.00 for eight hours of work and an overtime pay totalling to ₱80,000.00 per month.[7] Appellant informed her that she has twelve (12) visas with her and still needed two more persons to go to South Korea.[8] Appellant required her to submit the requirements that will be sent to South Korea for authentication.

Aguilar-Uy testified that appellant asked for ₱100,000.00 from them as payment for expenses needed to go to South Korea. Aguilar-Uy added that considering that she is also paying for her niece, Sheryl Reformado, who also wants to work abroad, she gave appellant the total amount of ₱200,000.00.

Thereafter, Aguilar-Uy waited for their visas until January 2005, but none were given to them. Aguilar-Uy called up and

---

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

[7] *Id*. at 333.

[8] *Id*.

texted appellant several times to no avail. Upon realizing that they will no longer be able to get their visas, she told appellant to return their passports instead but again appellant did not reply. Finally, when they eventually met on February 18, 2005, appellant asked her anew for additional payment of $72 to renew their visas. Aguilar-Uy narrated that appellant gave them a stub[9] which purported to be coming from the Embassy of the Republic of South Korea. However, when they presented the same to the Korean Embassy, they were told that all their documents were fake. Aguilar-Uy then lodged a complaint against the appellant before the Presidential Task Force Anti-Illegal Recruitment Agency. Appellant promised them that she would pay them back but failed to do so. Aguilar-Uy identified the appellant in open court.[10]

Testimony of second private complainant Sheryl Reformado:

For her part, private complainant, Sheryl Reformado (Reformado) essentially corroborated the testimonies of her aunt, Aguilar-Uy. She testified that she came to know appellant through their neighbor Gemma Dimatera and her sister Maggie Dela Cruz, who were also applying for work with appellant.[11]

Reformado narrated that on September 20, 2004, Gemma Dimatera and Maggie Dela Cruz went to her place at Blk. 22, Lot 13, Makiling St., Mountainview Subdivision, Muzon, San Jose del Monte City, Bulacan and informed her that appellant needed two more applicants to go to South Korea as overseas workers.[12] As agreed upon per phone conversation with appellant, they met in front of the Korean Embassy located in Makati. Appellant immediately asked for ₱40,000.00 from them since the working visa she had with her will expire.[13] She corroborated the claim of Aguilar-Uy that on different dates, they gave

---

[9] Exhibit "F", *id*. at 141.

[10] Records, p. 35.

[11] *Id*. at 110.

[12] *Id*. at 111.

[13] *Id*. at 115.

appellant the total amount of ₱200,000.00.[14] They waited for the processing of their passport and visa from November 2004 up to February 2005 but none were given to them as promised. Appellant gave them many alibis. They later on asked for police assistance and went to the Korean Embassy so they could get their passports, but the Consul scolded her since the papers they submitted were all fake.[15] Reformado also identified appellant in open court.[16]

Testimony of third private complainant Adona Lavaro:

Third private complainant, Adona Lavaro, testified that she was introduced to appellant by a certain Mary Anne Legaspi. She narrated that it was appellant who called her up and told her that her employer, Mr. Simeon Right, was looking for a domestic helper. Lavaro testified that appellant told her that she will be the one to facilitate the processing of her documents and assured her that she would be able to work in South Korea.[17]

On different occasions, Lavaro testified that appellant asked her for money to be able to work in South Korea. She claimed to have given appellant the amounts of (1) ₱40,000.00 as terminal fee, (2) ₱40,000.00 as processing fee; (3) $72 for the visa, (4) traveler's checks in the amount of US$200, and (5) ₱2,050.00 as terminal fee. Lavaro testified that she gave said amounts of money to appellant because she trusted her and she really wanted to leave for abroad but nothing happened. Lavaro waited for appellant's instruction or call but when appellant finally called her, it was only to ask her anew for money. At this time, she already started to doubt appellant. She later learned that appellant has also been asking money from other people who also wants to work abroad. Lavaro also identified appellant in open court.[18]

---

[14] *Id*. at 120.

[15] *Id*. at 125-126.

[16] *Id*. at 128.

[17] *Id*. at 269.

[18] *Id*. at 251.

In the course of the trial, the prosecution formally offered the following evidence to prove the payments made by private complainants to appellant,[19] to wit:

Amount	Date Given	Payment Details
₱ 40,000.00[20]	09/21/04	Received by Accused Michelle Dela Cruz
₱ 20,000.00[21]	09/27/04	Listed as payment with alleged signature of Accused Michelle Dela Cruz in a green notebook[22]
₱20,000.00[23]	10/04/04	Listed as payment with alleged signature of Accused Michelle Dela Cruz in a green notebook
₱ 30,000.00[24]	10/09/04	Listed as payment with alleged signature of Accused Michelle Dela Cruz in a green notebook
₱ 4,000.00[25]	10/13/04	Listed as payment with alleged signature of Accused Michelle Dela Cruz in a green notebook
₱ 2,800[26]	10/12/04	Listed as payment with alleged signature of Accused Michelle Dela Cruz in a green notebook
₱ 8,000 or $144[27]	10/04/04	Listed as payment with alleged signature of Accused Michelle Dela Cruz in a green notebook

[19] *Id*. at 133-135.

[20] *Id*. at 136.

[21] Exhibit "B-1", *id*. at 146.

[22] *Id*.

[23] Exhibit "B-2", *id*.

[24] Exhibit "B-3", *id*.

[25] Exhibit "B-4", *id*.

[26] Exhibit "B-5", *id*.

[27] Exhibit "B-6", *id*.

₱10,000.00[28]	10/15/04	Deposited in the Metrobank account of Norlita Hinagpis
₱ 10,000.00[29]	10/15/04	Deposited in the Equitable PCIBank account of Mario Castillo
₱ 4,000.00[30]	11/12/04	Deposited in the Metrobank account of Norlita Hinagpis
₱ 2,000.00[31]	01/05/05	Deposited in the Metrobank account of Norlita Hinagpis
₱ 150,800.00	**TOTAL**	

Meanwhile, prosecution witness, Rosalina Rosales testified that as per Certification[32] issued by Noriel Devanadera, Director IV, Licensing and Regulation Office, POEA, appellant Dela Cruz is not authorized to recruit workers for overseas employment during the year 2005 up to the present. Rosales was the one who prepared the Certification signed by Director Devanadera.

For the defense, appellant testified that prior to her arrest, she has worked in South Korea as an OFW for five years and three months. She alleged that private complainants, namely, Armely Aguilar, Adona Lavaro and Sheryl Aguilar were introduced to her by a certain Alma Palomares, the sister of her compadre Aldrin who was also an OFW in South Korea.[33] Thereafter, private complainants asked her the necessary requirements for them to be able to work in South Korea.

Appellant denied that she promised private complainants any deployment abroad, specifically in South Korea. She claimed

---

[28] Exhibit "D", *id*. at 139.

[29] Exhibit "C", *id*. at 138.

[30] Exhibit "E", *id*. at 140.

[31] Exhibit "B", *id*. at 137.

[32] Exhibit "H", *id*. at 144.

[33] Records, pp. 328-330.

that she just told them to secure the needed documents. Appellant averred that she introduced the complainants to her agent named "Rosa," who assisted her in going to Korea. She also admitted that she assisted the complainants in securing the original copies of ITR, employment certificate and bank certificate to get a tourist visa. However, after introducing the complainants to "Rosa", appellant claimed to be unaware anymore as to what happened next because she went to the province as she was pregnant that time.[34]

When confronted with an acknowledgement receipt marked as Exh. "A", appellant declared that said document represents the payment in securing the ITR and the bank certification. She averred that the amount of ₱40,000.00 was personally delivered to her and thereafter she gave the amount to Alma Palomares.[35] She said she did not know what Alma did with the money. She further added that private complainants filed a case against her just because she was the one who talked to them and they could not contact Aldrin, who was still in South Korea at that time.

On cross-examination, appellant testified that she facilitated for a fee the procurement of private complainants' papers like ITR, bank certificate and certificate of employment. She confirmed having received the amount of ₱40,000.00 for the facilitation of said documents. She claimed that Madam Rosa, Alma Palomares and private complainants were the ones communicating with each other.[36]

Appellant likewise admitted that the documents which she produced for private complainants were all fake. She recalled that her first entry to South Korea was illegal because she also used fake ITR, bank certificate and certificate of employment. Appellant, however, averred that she merely referred private complainants to the person who faked all her papers but she has no hand in the preparation of the fake documents.[37]

---

[34] *Id*. at 334-338.

[35] *Id*. at 338- 339.

[36] *Id*. at 341-342.

[37] *Id*. at 343-344.

On October 21, 2010, the RTC found the accused-appellant guilty of the crime of illegal recruitment in large scale and estafa. The dispositive portion of said decision reads in this wise:

> WHEREFORE, in Criminal Case No. 05-412, this Court finds the accused Michelle Dela Cruz guilty beyond reasonable doubt of violation of Article 38 (b) of the Labor Code, as amended, in relation to Article 13 (b) and 34 of the same Code (Illegal Recruitment in Large Scale) and hereby sentences her to suffer the penalty of life imprisonment and pay a fine of ₱500,000.00.
>
> Accused is further ordered to pay complainant Armely Aguilar-Uy the amount of ₱40,000.00 as actual or compensatory damages.
>
> In Criminal Case No. 05-413, this Court finds the accused Michell Dela Cruz guilty beyond reasonable doubt of the crime of Estafa under Article 315, par. 2 (a) of the Revised Penal Code and hereby sentences her to a prison term ranging from two (2) years, eleven (11) months and eleven (11) days of prision correccional as minimum up to eight (8) years of prision mayor as maximum.
>
> In Criminal Cases Nos. 05-414 and 05-415, accused Michelle Dela Cruz is hereby ACQUITTED of the crime charged for insufficiency of evidence.
>
> SO ORDERED."[38]

The RTC was unconvinced by the defense of alibi and denial interposed by appellant. The trial court relied on the testimony of Rosalina Rosales of the Licensing Division of the POEA who confirmed that appellant is not licensed to recruit workers for overseas employment. It likewise accorded greater weight to the testimonies of private complainants who positively identified appellant as the person who recruited them for employment in South Korea and received the placement fees.

The court *a quo* also found appellant guilty beyond reasonable doubt of estafa for misrepresenting herself as having the power and capacity to recruit and place private complainants as domestic helpers in South Korea. Such misrepresentation, the trial court stressed, induced private complainants to part with their money.

---

[38] CA *rollo*, p. 46.

Unperturbed, appellant appealed the trial court's decision before the Court of Appeals.

On July 2, 2013, in its disputed Decision,[39] the Court of Appeals denied the appellant's appeal for lack of merit.

Hence, this appeal, raising the same issues brought before the appellate court, to wit:

I

WHETHER THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

II

WHETHER THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION AND INSTEAD RELYING HEAVILY ON THE PROSECUTION'S VERSION.

Appellant avers that she cannot be held criminally liable for illegal recruitment because she merely assisted private complainants in processing their travel documents without any promise of employment. She asserts that the prosecution failed to establish whether she actually undertook any recruitment activity or any prohibited practice enumerated under Art. 13 (b) or Art. 34 of the Labor Code.

The appeal lacks merit.

The crime of illegal recruitment is defined and penalized under Sections 6 and 7 of Republic Act (*R.A.*) No. 8042, or the *Migrant Workers and Overseas Filipinos Act of 1995*,[40] as follows:

---

[39] *Supra* note 1.

[40] *REPUBLIC ACT NO. 8042: AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES.*

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 to two or more persons shall be deemed so engaged. It shall likewise include the following acts, x x x:

x x x x x x x x x

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Thus, in order to hold a person liable for illegal recruitment, the following elements must concur: (1) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of Republic Act No. 8042) and (2) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers. In the case of *illegal recruitment in large scale*, as in this case, a third element is required: that the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group.

In the instant case, appellant committed the acts enumerated in Section 6 of R.A. 8042. As testified to by Aguilar-Uy, Reformado and Lavaro, appellant gave them an impression that she is capable of sending them to South Korea as domestic helpers. The testimonial evidence presented by the prosecution clearly shows that, in consideration of a promise of overseas employment, appellant received monies from private complainants. Such acts were accurately described in the testimonies of the prosecution witnesses, to wit:

***Direct-examination of Armely Aguilar-Uy**:*

A. ***I was informed by this Michelle dela Cruz that she has twelve (12) visas with her and she still needs two more persons to go to Korea and during that time on September 20 she even called me and asked information regarding myself so that our papers will be sent to Korea for authentication.***

Q. You mentioned that you were called by Michelle dela Cruz. In what manner were you called?
A. Through [cellphone].

Q. What did the two of you talk about?
A. She asked me to give my name and age, the name of my niece Sheryl because according to her she needs to authenticate the papers.

Q. And would you kindly tell this Honorable Court what is the purpose of the authentication of the papers and the documents which you just mentioned?
A. ***For us to be able to go to Korea.***

Q. ***And after you were told through telephone call made by the accused asking for your names and documents for proper authentication with the Korean Embassy, what did you do next, Madame Witness?***
A. After that [cellphone] call from her that evening she told me to prepare the money and bring it so that we can meet each other the next day.

Q. Will you tell the Honorable Court what is the money for?
A. ***That money is for the expenses needed to be paid for us to go to Korea.***

Q. And that would be how much, Madame Witness?
A. ₱100,000.00

Q. And were you able to give that said amount of ₱100,000.00?
A. We were not able to give the full amount at once. We gave the said amount on various dates and different places.

Q. And would you kindly tell this Honorable Court in what manner and under what circumstances were you able to give the amount of ₱100,000.00 to the said accused?
A. ***Other payments by giving the money personally to her and the others we deposited the money in the bank.***[41]

---

[41] TSN, December 12, 2005, pp. 7-9.

x x x x x x x x x

Q. When was the last payment which you made?
A. December 5, 2004, additional payment for our tickets.

Q. After the last payment which you made, which you claimed you made a total payment of ₱200,000.00, would you kindly tell this Honorable Court what happened after you made the last payment?
A. She made several schedules for our departure and she even told us to bring our things. I gave a condition to her that we will not bring our things unless she will show to us our visa.

Q. And what is the reaction of the said accused when you told her unless she can be able to produce the visa?
A. ***She agreed and told us that she is going to show us the visa.***

Q. And was she able to show you your visa as promised?
A. No, sir.[42]

x x x x x x x x x

Q. ***Going back to your previous testimony that the said visa is for going to Korea and you were being recruited to work as what?***
A. Domestic Helper.

Q. And how much did said accused tell you on how much you are going to receive as your salary?
A. ₱50,000.00 for eight (8) hours plus overtime pay so we could earn ₱80,000.00 per month.[43]

Cross-examination of Sheryl Reformado:

Q. And it was this Alvin Palomares who knows Michelle dela Cruz and was the one who indorsed Michelle to Maggie dela Cruz?
A. I am not familiar with the story, what I am aware of was that she told us that Maggie Dela Cruz, that this Michelle Dela Cruz came from Korea and she is looking for workers to work there.

x x x x x x x x x

Q. And she told you that money will be required for the facilitation for the processing of these papers, so that you will be able to get the tourist visa for Korea?

---

[42] *Id*. at 24-25.

[43] *Id*. at 34.

A. ***She told us she needs the money to get the document and so we can travel and work abroad in Korea.***

Q. But this document was a requirement for the procurement of the tourist visa, is that right?
A. ***Yes ma'am. She told us that she is into direct hiring.***[44]

x x x x x x x x x

Re-direct examination of Sheryl Reformado:

Q. And when these documents were given to you, what were these documents for, according to the accused?
A. ***According to her, those documents are needed for us to work abroad.***

x x x x x x x x x

Re-cross examination of Sheryl Reformado:

Q. You for yourself to determine whether it is genuine or fake?
A. ***Yes ma'am. We were able to examine. We examined those documents, we were always asking her if we will not encounter any problem as to those documents, she told us none, because the consul in the Philippines and the consul in Korea knows about the document and she told us that those were just formality, so that we can work abroad.***[45]

Direct-examination of Adona Lavaro:

Q. What, if any, did you talk about?
A. ***On August 4, Michelle called up informing me that her employer needs domestic helper and from that time on she used to call me several times.***

Q. And after being told or being informed that there is that need for domestic helpers in Korea, what was your reaction, if any?
A. I made some thinking and because of several calls from her, I decided to accept the offer.[46]

x x x x x x x x x

---

[44] TSN, May 8, 2006, pp. 158-160.

[45] *Id*. at 72-173.

[46] TSN, June 14, 2006, p. 202.

Q. And you said a while ago, "'napapayag ka.'" What do you mean by napapayag ka?
A. ***I was encouraged to accept the job she was offering because of her good words and promises. She told me that the work will be from Monday to Friday and the salary would be ₱40,000.00 plus and I can have a part time job. And because of that I asked her about the fees and the other requirements. And she told me that I have to give a partial payment. According to her, I can give ₱40,000.00.***[47]

Cross-examination of Adona Lavaro:

Q. ***You never insisted from her for you to get your... you never insisted that you be deployed to Korea?***
A. No. more because she was always asking for money and gives us several promises that we will be able to work for Korea.[48]

Thus, considering the foregoing, we can conclude that all three elements of illegal recruitment in large scale are present in the instant case. To recapitulate: ***First,*** appellant engaged in recruitment when she represented herself to be capable of deploying workers to South Korea upon submission of the pertinent documents and payment of the required fees; ***Second,*** all three (3) private complainants positively identified appellant as the person who promised them employment as domestic helpers in Korea for a fee; and ***Third,*** Rosalina Rosales of the Licensing Division of the POEA, testified that as per Certification issued by Noriel Devanadera, Director IV, Licensing and Regulation Office, appellant is not licensed or authorized to recruit workers for overseas employment. Clearly, the existence of the offense of illegal recruitment in large scale was duly proved by the prosecution.

This Court has consistently conformed to the rule that findings of the trial court on the credibility of witnesses deserve great weight. Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the

---

[47] *Id*. at 203.

[48] TSN, September 4, 2006, p. 279. (Emphasis ours)

Court of Appeals, as in this case. The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination. In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[49]

Moreover, private complainants' testimonies were consistent and substantially corroborate each other on material points, such as the amount of the fees they gave to appellant, the country of destination and the nature of work. It was also established that appellant gave private complainants the impression that she had the ability to send them to South Korea for work in such a manner that the latter were convinced to part with their money in order to be employed. Without any evidence to show that private complainants were propelled by any ill motive to testify falsely against appellant, we shall accord their testimonies full faith and credit.[50]

Meanwhile, appellant's defense that she merely referred private complainants to a certain "Madam Rosa" fails to convince as the same was unsupported by any evidence. Between the categorical statements of the private complainants and the bare denial of appellant, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Denial, same as an alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated and concocted.[51]

---

[49] *People v. Colorada*, G.R. No. 215715 (Resolution), [August 31, 2016].

[50] *People v. Daud, et al.*, 734 Phil. 698, 718 (2014).

[51] *People v. Ocden*, 665 Phil. 268, 289 (2011).

Furthermore, we agree with the court *a quo* that the same pieces of evidence which establish appellant's liability for illegal recruitment in large scale likewise confirm her culpability for estafa.

It is well-established in jurisprudence that a person may be charged and convicted for both illegal recruitment and estafa. The reason therefor is not hard to discern: illegal recruitment is *malum prohibitum*, while estafa is *mala in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such intent is imperative. Estafa under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud.[52]

The elements of estafa by means of deceit are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[53]

In the instant case, the prosecution has established that appellant defrauded private complainants by leading them to believe that she has the capacity to send them to South Korea for work as domestic helpers, even as she does not have a license or authority for the purpose. Such misrepresentation came before private complainants delivered various amounts for purportedly travel expenses and visa assistance to appellant. Clearly, private

---

[52] *People v. Chua*, 695 Phil.16, 31 (2012).

[53] *Id*. at 32.

complainants would not have parted with their money were it not for such enticement by appellant. As a consequence of appellant's false pretenses, the private complainants suffered damages as the promised employment abroad never materialized and the money they paid were never recovered. All these representations were actually false and fraudulent and thus, the appellant must be made liable under par. 2 (a), Article 315 of the Revised Penal Code.

However, as to appellant's acquittal in Criminal Case Nos. 05-414 and 05-415, due to the trial court's finding that there is "insufficient" evidence to show that payment has been made to appellant, this Court can no longer review and pass judgment in view of the appellant's right against double jeopardy. Nevertheless, even if appellant was acquitted in these two estafa cases, it must be clarified that she can still be convicted of illegal recruitment. This is because while in estafa, damage is essential, the same is not an essential element in the crime of illegal recruitment. It is the lack of the necessary license or authority, not the fact of payment that renders the recruitment activity of appellant unlawful.[54] As long as the prosecution is able to establish through credible testimonial evidence that the accused-appellant has engaged in illegal recruitment, a conviction for the offense can very well be justified.[55]

PENALTY

The crime of illegal recruitment is penalized under Sections 6 and 7 of RA 8042, or the *Migrant Workers and Overseas Filipinos Act of 1995,* to wit:

SEC. 7. Penalties. —

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than

---

[54] See *C.F. Sharp Crew Management, Inc. v. Undersecretary Español*, 559 Phil. 826, 837 (2007); *People v. Señoron*, 334 Phil. 932, 940 (1997); *People v. Sanchez*, 353 Phil. 536, 549 (1998).

[55] *People v. Saley*, 353 Phil. 897, 932 (1998).

Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

As the crime was committed in large scale, it is an offense involving economic sabotage and is punishable by life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. The trial court, thus, aptly imposed the penalty of life imprisonment and a fine of ₱500,000.00.

The prescribed penalty for estafa under Article 315 of the RPC, is prision correccional maximum to prision mayor minimum, if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount exceeds ₱22,000.00, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, provided that the total penalty shall not exceed twenty (20) years.

Since the amount defrauded exceeded ₱22,000.00, the penalty shall be imposed in its maximum period which is six (6) years, eight (8) months and twenty-one (21) days to eight (8) years.

Applying the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower to that prescribed by the RPC, or anywhere within *prision correccional* in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months. Thus, in this case, the minimum term to be imposed should be four (4) years and two (2) months of *prision correccional*.

The maximum term, on the other hand, shall be that which could be properly imposed under the rules of the RPC, which in this case shall be six (6) years, eight (8) months and twenty-one (21) days to eight (8) years. The incremental penalty shall be added to the maximum period of the prescribed penalty,

which is anywhere between six (6) years, eight (8) months and twenty-one (21) days to eight (8) years.

While there were several evidence formally offered during trial, only Exhibit "A,"[56] representing the receipt amounting to ₱40,000.00 received by appellant from complainant Aguilar-Uy, can be given probative value. And considering the amount defrauded is ₱40,000.00 which is ₱18,000.00 more than ₱22,000.00, one (1) year shall be added to six (6) years, eight (8) months and twenty-one (21) days making the maximum term of the indeterminate sentence to seven (7) years, eight (8) months and twenty-one (21) days.

Finally, following prevailing jurisprudence, the Court, likewise, imposes interest at the rate of six percent (6%) *per annum* on each of the amounts awarded from the date of finality of this Decision until fully paid.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The Court of Appeals Decision dated July 2, 2013 in CA G.R. CR-HC No. 04935 is **AFFIRMED** with **MODIFICATION** to read as follows:

1. In Criminal Case No. 05-412, the Court finds appellant Michelle Dela Cruz **GUILTY** beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale. She is hereby sentenced to suffer the penalty of life imprisonment, and ordered to pay a fine of ₱500,000.00;

2. In Criminal Case No. 05-413, the Court finds appellant Michelle Dela Cruz **GUILTY** beyond reasonable doubt of the crime of estafa and sentences her to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seven (7) years, eight (8) months and twenty-one (21) days of *prision mayor*, as maximum.

3. Appellant Michelle Dela Cruz is likewise ordered to indemnify private complainant Armely Aguilar Uy in the

---

[56] Records, p. 136.

amount of Forty Thousand Pesos (₱40,000.00) as actual damages, with legal interest of six percent (6%) *per annum* from the finality of this decision, until the said amount is fully paid.

SO ORDERED.

Mendoza, Leonen, and *Martires, JJ.,* concur.

*Carpio*** *(Chairperson), J.,* on wellness leave.

SECOND DIVISION

[G.R. No. 218970. June 28, 2017]

RICHARD ESCALANTE, *petitioner vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED.— Only questions of law may be raised in a petition for review on *certiorari* before the Court. A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal **on pure questions of law** and only in exceptional circumstances has the Court entertained questions of fact.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE VICTIM'S IDENTIFICATION OF THE ACCUSED WAS OBJECTIVE ENOUGH TO BE CREDIBLE BECAUSE IT WAS DONE UNDER COURT SUPERVISION AND WITH THE ADDED PARAMETERS USUALLY OBSERVED IN OUT-OF-COURT IDENTIFICATION; CASE AT BAR.—

** Acting Chairperson, per Special Order No. 2445 dated June 16, 2017.

In *People v. Pineda,* the Court laid down the guidelines in identifications of accused through photographs, x x x The said guidelines are necessary considering that the out-of-court identification of an accused is susceptible to suggestiveness. These paramaters are in place to make the identification of the accused as objective as possible. In the case at bench, there is no reason to doubt AAA's identification of Escalante. It is noteworthy that the identification was done in open court. Further, the trial court adopted a similar manner with out-of-court identifications through photographs. As culled from the records, AAA was presented with several pictures in open court from which he was asked to pinpoint who was his abuser. He was able to identify Escalante without any leading question which clearly suggests that the picture identified was that of the latter. Thus, AAA's identification was objective enough to be credible because it was done under court supervision and with the added parameters usually observed in out-of-court identifications. Significantly, no objections were raised over the manner in which Escalante was identified, which, it must be noted, was only resorted to because he failed to appear in court for identification.

3. ID.; ID.; ID.; ALIBI, AS A DEFENSE; IN ORDER FOR ALIBI TO PROSPER, THE ACCUSED MUST BE ABLE TO ESTABLISH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE; NOT ESTABLISHED IN CASE AT BAR.— In *People v. Ramos*, the Court explained that in order for alibi to prosper, the accused must be able to establish that it was physically impossible for him to be at the crime scene. Escalante himself admitted that Salada's house was merely a thirty (30)-minute ride away from the scene of the crime. Obviously, it was very possible for him to be at the place at that time. x x x Thus, Escalante failed to prove that it was physically impossible for him to be at the crime scene at the time of the incident. Further, AAA positively identified Escalante. Alibis and denials are worthless in light of positive identification by witnesses who have no motive to falsely testify.

4. ID.; CRIMINAL PROCEDURE; APPEALS; WHEN AN ACCUSED APPEALS HIS JUDGMENT OF CONVICTION, HE WAIVES HIS CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY AND THROWS THE ENTIRE CASE OPEN FOR APPELLATE REVIEW.— It

is axiomatic that when an accused appeals his judgment of conviction, he waives his constitutional guarantee against double jeopardy and throws the entire case open for appellate review. The Court is tasked to render such judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned. This authority includes modifying the penalty imposed— either increasing or decreasing the same.

5. ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; ELEMENTS.— In *People v. Larin*, the Court stated that the elements of sexual abuse under Section 5(b) of R.A. No. 7610 are as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It further ruled: It must be noted that the law covers not only a situation in which a child is abused for profit, but also in which a child, though coercion or intimidation, engages in any lascivious conduct. **Hence, the foregoing provision penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children. x x x** In *Quimvel v. People*, the Court expounded that sexual abuse under Section 5(b) of R.A. No. 7610 includes sexual maltreatment of the child, whether habitual or not.

6. ID.; ID.; ID.; IMPOSABLE PENALTY IN CASE AT BAR.— [E]ven if the Information does not categorically state that Escalante was being charged with child abuse under Section 5(b) of R.A. No. 7610, he may still be convicted for the said crime. It is doctrinal that it is not the title of the complaint or information which is controlling but the recital of facts contained therein. The information must sufficiently alleged the acts or omissions complained of to inform a person of common understanding what offense he is being charged with—in other words the elements of the crime must be clearly stated. A closer perusal of the allegation under the Information discloses that it is sufficient to charge Escalante with sexual abuse under the Section 5(b) of R.A. No. 7610.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* seeks to reverse and set aside the October 13, 2014 Decision[1] and June 9, 2015 Resolution[2] of the Court Appeals *(CA)* in CA-G.R. CR No. 35771, which affirmed the May 22, 2013 Decision[3] of the Regional Trial Court, Branch 172, Valenzuela City *(RTC)*, finding petitioner Richard Escalante *(Escalante)* guilty of violating Section 10(a) of Republic Act *(R.A.)* No. 7610 or the "*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*."

Escalante was charged with the crime of child abuse committed against AAA, who was then a twelve (12) year old minor. When arraigned, he pleaded "not guilty." Thereafter, trial ensued.

Evidence of the Prosecution

The prosecution presented private complainant, AAA, and Leonora Abrigo Mariano *(Mariano)*, Records Custodian of Fatima Medical Center. Their combined testimonies tended to prove that at around midnight of December 24, 2006, AAA accompanied his classmate Mark in going home. On his way back from Mark's house, AAA was called by Escalante and was pulled into a comfort room at the Divine School in Parada, Valenzuela City. Once inside, Escalante pulled down AAA's shorts and sucked the latter's penis for about ten (10) minutes. Shortly thereafter, he forcibly inserted AAA's penis into his anus.

---

[1] Penned by Associate Justice Mariflor P. Punzalan-Castillo with Associate Justice Amy C. Lazaro-Javier and Associate Justice Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 65-84.

[2] *Id*. at 100-103.

[3] Penned by Judge Nancy Rivas-Palmones; *id.* at 41-43.

Four (4) days after the incident, AAA complained to his mother that he was experiencing pain in his penis and had difficulty in urinating. He divulged the incident to his mother, who then brought him to the Fatima Medical Center for examination. In the course of the examination, it was determined that he was afflicted with gonorrhoea, a sexually-transmitted disease and urinary tract infection.[4]

Evidence of the Defense

The defense presented Escalante, his father Nicomedes Escalante, and their neighbor Josephine Salada *(Salada)*. Their combined testimonies tended to establish that at around midnight of December 24, 2006, Escalante was in Salada's house celebrating Christmas Eve; that the celebration started at 10:00 o'clock in the evening and lasted between 1:00 o'clock and 3:00 o'clock the following morning; that he could not have been in the school because he never left Salada's house as he was tasked with passing around shots of liquor; and that Salada's house was only a thirty (30)-minute ride away from the place where the incident occurred.

The RTC Ruling

In its May 22, 2013 Decision, the RTC found Escalante guilty of violating Section 10(a) of R.A. No. 7610. It ruled that the totality of the prosecution's evidence was sufficient to establish that he physically and sexually abused AAA. The RTC did not give credence to Escalante's alibi as it found AAA's identification of the accused as his assailant credible. It added that Escalante's alibi was not convincing enough to prove that it was physically impossible for him to be at the location of the crime. The dispositive portion of the decision reads:

> WHEREFORE, the court finds the accused RICHARD ESCALANTE guilty beyond reasonable doubt as principal for violation of Section 10(a) of R.A. 7610 in relation to Sec. 3(b), No. 1 & 2, and in the absence of any modifying circumstances, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of

---

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

imprisonment of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum.

The accused is likewise ordered to pay AAA the amount of Php50,000.00 as moral damages and to pay a fine of Php15,000.00.

SO ORDERED.[5]

Aggrieved, Escalante appealed before the CA. In his Appellant's Brief,[6] he contended that he was not positively identified by AAA as his abuser; that AAA could not readily recognize him as the former testified that the place where he was abused was dark; that more than three (3) years had passed when AAA testified in court, making his recollection doubtful; and that AAA only identified the supposed culprit by a mere photograph which had not been authenticated and its origins as well as its processing were never established.

The CA Ruling

In its assailed Decision, dated October 13, 2014, the CA affirmed Escalante's conviction for the crime of child abuse under Section 10(a) of R.A. No. 7610. It held that AAA's testimony was credible because there was no reason for him to fabricate such a story, considering that he was only a child and it was unlikely that he would place himself in such a humiliating experience. It disregarded Escalante's alibi as he was positively identified and it was not physically impossible for him to be at the scene of the crime at the time of the incident.

Escalante moved for reconsideration, but his motion was denied by the CA in its assailed Resolution dated June 9, 2015.

Hence, this appeal raising:

SOLE ISSUE

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING

---

[5] *Id*. at 43.

[6] *Id*. at 30-40.

HEREIN PETITIONER GUILTY DESPITE REASONABLE DOUBT OWING TO THE FACT THAT THE PETITIONER WAS NOT REALLY POSITIVELY IDENTIFIED BY THE PRIVATE COMPLAINANT.[7]

Escalante averred that AAA merely pointed to a picture of him during trial. He argued that he was not positively identified as the photograph used to identify him was not authenticated and its origins were never established. Moreover, he challenged the credibility and accuracy of AAA's testimony as it was given after more than three (3) years from the date of the alleged abuse.

In its Comment,[8] dated January 25, 2016, the Office of the Solicitor General *(OSG)* countered that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. At any rate, the OSG argued that even if the petition be given due course, it is still without merit as Escalante's conviction was proven beyond reasonable doubt. It explained that AAA had positively identified Escalante as the assailant, and the fact that it was done through photographs did not diminish the veracity of the identification. The OSG pointed out that in spite of notice and warning, Escalante failed to appear in court for identification, and his counsel did not object to the manner of identification adopted because of his absence. At any rate, it argued that in-court identification is not essential when there is no doubt as to the identity of the accused as the person charged in the Information.

The OSG contended that the evidence on record sufficiently established Escalante's guilt of the crime charged. It stated that his act constituted child abuse as it amounted to sexual, physical and psychological abuse. The OSG bewailed that Escalante's act was an assault on the dignity and intrinsic worth of AAA as a human being.

In his Manifestation in lieu of Reply,[9] dated August 3, 2016, Escalante averred that he was adopting his Appellant's Brief

---

[7] *Id*. at 17.

[8] *Id*. at 111-125.

[9] *Id*. at 129-130.

before the CA as his Reply as all the relevant issues had been extensively and exhaustively argued therein.

The Court's Ruling

The petition is bereft of merit.

Only questions of law may be raised

Only questions of law may be raised in a petition for review on *certiorari* before the Court.[10] A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal **on pure questions of law** and only in exceptional circumstances has the Court entertained questions of fact.[11]

Although Escalante admits that his petition presents questions of fact, he insists that his case is an exception to the general rule because the factual findings of the lower courts are not supported by the records. A scrutiny thereof, however, shows that none of the exceptions are present to warrant a review.

Granting that exceptional circumstances exist warranting the Court to entertain the present petition, the merits of the case still fail to convince.

Escalante was sufficiently and appropriately identified

In *People v. Pineda,*[12] the Court laid down the guidelines in identifications of accused through photographs, to wit:

> The first rule in proper photographic identification procedure is that a **series of photographs must be shown**, and **not merely of that of the suspect**. The second rule directs that when a witness is shown a group of pictures, their **arrangement and display should in no way suggest which one of the pictures pertains to the suspect**.[13] [Emphases supplied]

---

[10] Section 1 Rule 45 of the Revised Rules of Court.

[11] *Century Iron Works, Inc. v. Banas*, 711 Phil. 576, 585 (2013).

[12] 473 Phil. 517 (2004).

[13] *Id*. at 540.

The said guidelines are necessary considering that the out-of-court identification of an accused is susceptible to suggestiveness. These paramaters are in place to make the identification of the accused as objective as possible.

In the case at bench, there is no reason to doubt AAA's identification of Escalante. It is noteworthy that the identification was done in open court. Further, the trial court adopted a similar manner with out-of-court identifications through photographs. As culled from the records, AAA was presented with several pictures in open court from which he was asked to pinpoint who was his abuser. He was able to identify Escalante without any leading question which clearly suggests that the picture identified was that of the latter.

Thus, AAA's identification was objective enough to be credible because it was done under court supervision and with the added parameters usually observed in out-of-court identifications. Significantly, no objections were raised over the manner in which Escalante was identified, which, it must be noted, was only resorted to because he failed to appear in court for identification.

Escalante's alibi fails to impress

In *People v. Ramos*,[14] the Court explained that in order for alibi to prosper, the accused must be able to establish that it was physically impossible for him to be at the crime scene. It wrote:

> However, for the defense of alibi to prosper, the accused must prove (a) that she was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for her to be at the scene of the crime during its commission. Physical impossibility refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. She must demonstrate that she was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.[15]

---

[14] 715 Phil. 193 (2013).

[15] *Id*. at 206.

Escalante himself admitted that Salada's house was merely a thirty (30)-minute ride away from the scene of the crime. Obviously, it was very possible for him to be at the place at that time. Escalante's witnesses even testified that they were not with him the entire time. He could have easily left Salada's house and return without his absence being noticed considering the number of people present and the proximity of Salada's house from the crime scene. Thus, Escalante failed to prove that it was physically impossible for him to be at the crime scene at the time of the incident.

Further, AAA positively identified Escalante. Alibis and denials are worthless in light of positive identification by witnesses who have no motive to falsely testify.[16] The RTC and the CA found no cogent reason for AAA to fabricate his allegations against Escalante.

Child Abuse under Section 5(b) of R.A. No. 7610, not Section 10(a) thereof

It is axiomatic that when an accused appeals his judgment of conviction, he waives his constitutional guarantee against double jeopardy and throws the entire case open for appellate review.[17] The Court is tasked to render such judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned.[18] This authority includes modifying the penalty imposed— either increasing or decreasing the same.

Escalante was convicted by the RTC of child abuse under Section 10(a) of R.A. No. 7610. The correct provision, however, should be Section 5(b) of R.A. No. 7610, which imposes a higher penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Section 5(b) of R.A. No. 7610 reads:

---

[16] *People v. Rarugal*, 701 Phil. 592, 597 (2013).

[17] *Gelig v. People*, 640 Phil. 109, 115 (2010).

[18] *Id*.

Sec. 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**.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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 subjected to other sexual abuse**: x x x

On the other hand, Section 10(a) thereof states:

Section 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development*—

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

As can be gleaned from the above-mentioned provisions, Section 5(b) of R.A. No. 7610 specifically applies in case of sexual abuse committed against children; whereas, Section 10(a) thereof punishes other forms of child abuse not covered by other provisions of R.A. No. 7610. Parenthetically, the offense will not fall under Section 10(a) of R.A. No. 7610 if the same is specifically penalized by a particular provision of the law such as Section 5(b) for sexual abuse.

In *People v. Larin*,[19] the Court stated that the elements of sexual abuse under Section 5(b) of R.A. No. 7610 are as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in

[19] 357 Phil. 987 (1998).

prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It further ruled:

> It must be noted that the law covers not only a situation in which a child is abused for profit, but also in which a child, though coercion or intimidation, engages in any lascivious conduct. **Hence, the foregoing provision penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children.**[20] [Emphasis supplied]

All of the foregoing elements are present in the case at bench.

First, in forcibly sucking AAA's penis and thereafter inserting it in his anus, Escalante, without question exposed AAA to lascivious conduct. *Second*, AAA is a child subjected to other sexual abuse. In *Caballo v. People (Caballo)*,[21] the Court ruled that a child who engages in sexual or lascivious conduct due to the coercion or influence is a child subjected to other sexual abuse, *viz*:

> As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "*child exploited in prostitution and other sexual abuse*." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.[22]

In addition, the Court, in *Caballo* considered the age disparity between an adult and a minor as *indicia* of coercion or influence. In the case at bench, AAA was only twelve (12) years old at the time of the sexual abuse. The records, on the other hand, disclosed that Escalante was twenty (20) years old at the time of the commission of the crime. The disparity of eight (8) years

---

[20] *Id*. at 998.

[21] 710 Phil. 792 (2013).

[22] *Id*. at 805.

between them placed Escalante in a stronger position over AAA to exert his will upon the latter. In addition, AAA testified in open court that he could not resist because he feared Escalante as the latter was taller and bigger than him.

Further, the fact that the sexual encounter between Escalante and AAA occurred only once does not remove it from the ambit of Section 5(b) of R.A. No. 7610. In *Quimvel v. People*,[23] the Court expounded that sexual abuse under Section 5(b) of R.A. No. 7610 includes sexual maltreatment of the child, whether habitual or not, to wit:

> Contrary to the exposition, the very definition of "child abuse" under Sec. 3(b) of RA 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 Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.**
>
> x x x x x x x x x
>
> It is as my esteemed colleagues Associate Justices Diosdado M. Peralta and Estela M. Perlas-Bernabe reminded the Court. *Ratio legis est anima*. The reason of the law is the soul of the law. **In this case, the law would have miserably failed in fulfilling its loft purpose of providing special protection to children from all forms of abuse if the Court were to interpret its penal provisions so as to require the additional element or contemporaneous abuse that is different from what is complained of, and if the Court were to require that a third person act in concert with the accused.** [Emphases supplied]

Third, AAA's minority was sufficiently established. As shown by his birth certificate, he was only twelve (12) years old at the time the alleged sexual assault occurred. All in all, it is clear that Escalante, an adult with all his influence and power over the minor AAA, coerced the latter into satiating his sexual urges at the expense of his youth, innocence and purity. Surely, such perverse actions warrant the harsher penalty under R.A.

---

[23] G.R. No. 214497, April 18, 2017.

No. 7610 in consonance with the State's policy to protect children from all forms of abuse or exploitation.

Finally, even if the Information does not categorically state that Escalante was being charged with child abuse under Section 5(b) of R.A. No. 7610, he may still be convicted for the said crime. It is doctrinal that it is not the title of the complaint or information which is controlling but the recital of facts contained therein. The information must sufficiently alleged the acts or omissions complained of to inform a person of common understanding what offense he is being charged with—in other words the elements of the crime must be clearly stated.[24] A closer perusal of the allegation under the Information discloses that it is sufficient to charge Escalante with sexual abuse under the Section 5(b) of R.A. No. 7610 as it read:

> That on or about December 25, 2006, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, did then and there willfully and unlawfully committed acts of child abuse **against AAA, (Complainant), 12 years old** (DOB: March, 2, 1994), **by kissing his neck down to his sex organ and forced the complainant to insert his sex organ into the anus of Richard Escalante** thereby subjecting said minor to psychological and physical abuse, cruelty and emotional maltreatment and which act debased, degraded and demeaned her *(sic)* intrinsic worth and dignity as a human being.
>
> Contrary to law.[25] [Emphasis and underscoring supplied]

In the present case, the Information alleged that Escalante kissed AAA's neck down to his sex organ and forcibly inserted AAA's penis into his anus. Further, the evidence on record proves that AAA was coerced into submitting to Escalante's will as he was unable to put up any resistance out of fear. As earlier stated, AAA's minority was satisfactorily established.

In the case at bench, both the Information and the evidence on record spell out a case of sexual abuse punishable under

---

[24] *People v. Dimaano*, 506 Phil. 630, 649 (2005).

[25] *Rollo*, p. 41.

Section 5(b) of R.A. No. 7610. Hence, the penalty imposed against Escalante should be modified accordingly.

To recapitulate, Section 10(a), Article VI of R.A. No. 7610, wherein a penalty of *prision mayor* in its minimum period is prescribed, contemplates any other acts of child abuse, cruelty or exploitation or other conditions prejudicial to the child's development. In contrast, Section 5(b) thereof specifically applies to the commission of the act of sexual intercourse or lascivious conduct to a child subjected to other sexual abuse.

Based on the foregoing, Escalante should suffer the penalties imposed in Section 5(b), not Section 10(a), of R.A. No. 7610. In *Pinlac v. People (Pinlac)*,[26] the Court categorically enumerated the penalties and damages to be imposed on accused convicted under Section 5(b) of R.A. No. 7610, to wit:

> Under Section 5, Article III of RA 7610, the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed on those who commit acts of lasciviousness with a child exploited in prostitution or subjected to other sexual abuse. Notwithstanding the fact that RA 7610 is a special law, the petitioner in this case may enjoy the benefits of the Indeterminate Sentence Law. In applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* in its medium period to *reclusion temporal* in its minimum period. Thus, the CA correctly imposed the indeterminate sentence of eight (8) years and one (1) day of *prision mayor* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum.
>
> The CA likewise correctly ordered petitioner to pay "AAA" the following amounts: ₱20,000.00 in the concept of civil indemnity, ₱15,000.00 as moral damages, and a fine of ₱15,000.00 pursuant to Section 31 (f), Article XII of RA 7610. In addition, this Court also orders petitioner to pay "AAA" ₱15,000.00 by way of exemplary damages.

In the case at bench, the imposition of a penalty similar to *Pinlac* is warranted. In both cases, the accused performed oral sex on the victim minor. In *Pinlac*, the accused had oral sex with

---

[26] G.R. No. 197458, November 11, 2015.

the minor for two successive days. On the other hand, Escalante had oral sex with AAA first and then inserted the latter's penis to his anus.

WHEREFORE, the October 13, 2014 Decision of the Court of Appeals in CA-G.R. CR No. 35771 is hereby **MODIFIED**, in that, petitioner Richard Escalante, is found guilty of Child Abuse punishable under Section 5(b) of Republic Act No. 7610 and sentenced to suffer an indeterminate penalty of Eight (8) years and One (1) day of *prision mayor*, as minimum, to Seventeen (17) years, Four (4) months and One (1) day of *reclusion temporal*, as maximum. He is also ordered to pay AAA the amounts of ₱20,000.00 as civil indemnity; ₱15,000.00 as moral damages; ₱15,000.00 as exemplary damages, and ₱15,000.00 fine plus interest on all damages awarded at the rate of 6% per annum from the date of finality of this decision until the same have been fully paid.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Leonen,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

SECOND DIVISION

[G.R. No. 221096. June 28, 2017]

CLAUDIA'S KITCHEN, INC. and ENZO SQUILLANTINI, *petitioners, vs.* **MA. REALIZA S. TANGUIN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; ILLEGAL

---

[*] Per Special Order No. 2445 dated June 16, 2017.

DISMISSAL; BEFORE THE EMPLOYER BEARS THE BURDEN OF PROVING THAT THE DISMISSAL WAS LEGAL, THE EMPLOYEE MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THAT INDEED HE/SHE WAS DISMISSED; CASE AT BAR.— In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause. But before the employer must bear the burden of proving that the dismissal was legal, the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof. x x x Tanguin miserably failed to discharge this burden. She simply alleged that a security guard barred her from entering her workplace. Yet, she offered no evidence to prove the same. Absent any evidence that she was prevented from entering her workplace, what remained was her bare allegation, which could not certainly be considered substantial evidence. At any rate, granting that she was barred, there was a lawful basis therefor as she had been placed under preventive suspension pending investigation.

2. ID.; ID.; ID.; ABANDONMENT; MERE ABSENCE OR FAILURE TO REPORT FOR WORK, EVEN AFTER A NOTICE TO RETURN TO WORK HAS BEEN SERVED, IS NOT ENOUGH TO AMOUNT TO AN ABANDONMENT OF EMPLOYMENT; CASE AT BAR.— *Tan Brothers Corporation of Basilan City v. Escudero* extensively discussed abandonment in labor cases*:* As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 296] of the Labor Code. **To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.** x x x In this case, records are bereft of any indication that Tanguin's failure to report for work was with a clear intent to sever her employment relationship with the petitioners. Mere absence or failure to report for work, even after a notice to

return to work has been served, is not enough to amount to an abandonment of employment. Moreover, Tanguin's act of filing a complaint for illegal dismissal with prayer for reinstatement negates any intention to abandon her employment. On the theory that the same is proof enough of the desire to return to work, the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, has been held to be totally inconsistent with a charge of abandonment.

3. **ID.; ID.; ID.; PAYMENT OF SEPARATION PAY; AS A RULE, EMPLOYEES DISMISSED FOR JUST CAUSES ARE NOT ENTITLED TO SEPARATION PAY; EXCEPTION.—** Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298 and 299 of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible. On the other hand, an employee dismissed for any of the just causes enumerated under Article 297 of the same Code, being causes attributable to the employee's fault, is not, as a general rule, entitled to separation pay. The non-grant of such right to separation pay is premised on the reason that an erring employee should not benefit from their wrongful acts. Under Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code, such dismissed employee is nonetheless entitled to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice. As an exception, case law allows the grant of separation pay or financial assistance to a legally-dismissed employee as a measure of social justice or on grounds of equity. In *Philippine Long Distance Telephone Co. v. NLRC (PLDT)*, the Court allowed the grant when the employee was validly dismissed for causes other than serious misconduct or those reflecting on his moral character.

4. **ID.; ID.; ID.; PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT; AS A RULE, SEPARATION PAY IN LIEU OF REINSTATEMENT COULD NOT BE AWARDED TO AN EMPLOYEE WHOSE EMPLOYMENT WAS NOT TERMINATED BY HIS EMPLOYER; INSTANCES WHEN SEPARATION PAY MAY BE AWARDED TO DISMISSED EMPLOYEES, ENUMERATED.—** The payment of separation pay and reinstatement are exclusive remedies. The payment of separation pay replaces the legal consequences of reinstatement

to an employee who was illegally dismissed. To award separation pay in lieu of reinstatement to an employee who was never dismissed by his employer would only give *imprimatur* to the unacceptable act of an employee who is facing charges related to his employment, but instead of addressing the complaint against him, he opted to file an illegal dismissal case against his employer. In sum, separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character; 4) where the dismissed employee's position is no longer available; 5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer.

5. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; UNDER THE DOCTRINE OF STRAINED RELATIONS, THE PAYMENT OF SEPARATION PAY IS CONSIDERED AN ACCEPTABLE ALTERNATIVE TO REINSTATEMENT WHEN THE LATTER OPTION IS NO LONGER DESIRABLE OR VIABLE; NOT APPLICABLE IN CASE AT BAR.— Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Strained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone. x x x The doctrine on strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in strained

relations; otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. Finally, it must be noted that Taguin herself is asking for her reinstatement, the same being one of the reliefs she prayed for in her Appeal before the NLRC and even in her Comment to the petition for review filed by the petitioners. To recapitulate, there was neither dismissal nor abandonment. At the time Taguin initiated the illegal dismissal case, the complaint had no basis. The *status quo ante* was that she was being asked to explain the accusation against her. Instead of complying, she opted to file a complaint for illegal dismissal. It was premature, if not pre-emptive, which the Court cannot tolerate or accommodate. At this time, her plea for reinstatement, backwages and/or separation pay cannot be granted. Respondent should return to work and answer the complaints against her and the petitioners should accept her, without prejudice to the result of the investigation against her.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioners.

Bienvenido C. Elorcha for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to modify the April 15, 2015 Decision[1] and October 13, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 130332, which modified the November 29, 2012 Decision[3] and April 4, 2013

---

[1] Penned by Associate Justice Edwin D. Sorongon with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ricardo R. Rosario, concurring; *rollo*, p. 35-A-48.

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

[3] Penned by Presiding Commissioner Leonardo L. Leonida with Commissioner Mercedes R. Posada-Lacap, concurring; Commissioner Dolores M. Peralta Beley, on leave; *id.* at 89-99.

Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC NCR CN. 01-01520-11/NLRC LAC No. 02-000693-12, a case for illegal dismissal.

The Antecedents

Respondent Ma. Realiza S. Tanguin *(Tanguin)* was employed by petitioner Claudia's Kitchen, Inc. *(Claudia's Kitchen)* on June 20, 2001. She performed her functions as a billing supervisor in Manila Jockey Club's Turf Club Building in San Lazaro Leisure and Business Park *(SLLBP),* Carmona, Cavite. Her duties and responsibilities involved 1) Sorting and preparing suppliers' billing statements; 2) Releasing check payments to the suppliers after being approved and signed by the management; 3) Giving job assignment to employees; 4) Training and conducting orientation of new employees and monitoring their progress; 5) Encoding daily and monthly menu production; 6) Preparing and submitting weekly and monthly inventory and sales reports to the head office; 7) Handling petty cash funds and depositing daily and weekly collections; and 8) Programming cash register.

Tanguin averred that on October 26, 2010, she was placed on preventive suspension by Marivic Lucasan *(Lucasan)*, Human Resources Manager, for allegedly forcing her co-employees to buy silver jewelry from her during office hours and inside the company premises. On the same date, she was directed by Lucasan to submit her written explanation on the matter. Tanguin admitted that she was selling silver jewelry, but she denied that she did so during office hours. On October 30, 2010, she was barred by a security guard from entering the company premises. She was informed by her co-employees, namely Khena Nama, Jordan Lopez and Rose Marie Esquejo that they were forced to write letters against her, or else they would be terminated from their work.

For their part, Claudia's Kitchen and Enzo Squillantini, its President, *(petitioners)* countered that in October 2010, they

---

[4] *Id*. at 82-87.

received reports from some employees that Tanguin was allegedly forcing some of them to buy silver jewelry from her during office hours and inside the company premises, which the latter admitted. In order to conduct a thorough investigation, she was placed under preventive suspension on October 26, 2010. On October 27, 2010, the petitioners sent Tanguin a letter requiring her to submit a written explanation as to why she should not be charged for conducting business within the company premises and during office hours. During her suspension, the petitioners discovered her habitual tardiness and gross negligence in the computation of the total number of hours worked by her co-employees. Subsequently, they sent letters to her, to wit:

1. First Notice – sent on November 17, 2010 requiring Tanguin to report to the Head Office on November 19, 2010 at 10:00 o'clock in the morning to explain her alleged infractions;[5]
2. Second Notice – sent on November 24, 2010 requiring Tanguin to explain the charges against her;[6]
3. Third Notice – sent on November 25, 2010 requiring Tanguin to report to the Head Office and to explain the charges against her;[7]
4. Letter – sent on December 1, 2010 **reminding Tanguin that she was still an employee** of Claudia's Kitchen and directing her to report back to work;[8] and
5. Final Letter – sent on December 2, 2010 requiring Tanguin to report for work on December 3, 2010 at 10:00 a.m.[9]

Tanguin, however, failed to act on these notices.

---

[5] *Id*. at 205.

[6] *Id*. at 206.

[7] *Id*. at 210.

[8] *Id*. at 211.

[9] *Id*. at 212.

The LA Ruling

In a Decision,[10] dated December 22, 2011, the LA ruled that Tanguin's preventive suspension was justified because, as supervisor, she was in possession of the company's cash fund and collections. It stressed that she was not illegally dismissed. Nevertheless, the LA ordered the petitioners to pay Tanguin her unpaid salary. The *fallo* reads:

> WHEREFORE, a Decision is hereby rendered declaring that Complainant was not illegally DISMISSED. Respondents are hereby ordered to pay Complainant her salary from October 10 to 25, 2010 as follows:
>
> UNPAID SALARY
>
> 10/10- 25/10 – 15 days
> ₱13,600/26 x 15 = ₱7,846.15
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[11]

Unsatisfied, Tanguin elevated an appeal before the NLRC.

The NLRC Ruling

In its November 29, 2012 Decision, the NLRC partly granted Tanguin's appeal. It opined that there was no scintilla of proof that she was dismissed from service. It pointed out that it was she who chose not to report for work despite receipt of notices requiring her to report to the head office. It stated that the nature of her position as billing supervisor, whereby she held company funds and gave job assignments to the employees, was sufficient basis for the preventive suspension.

The NLRC, however, found that Tanguin did not abandon her work when she failed to report for work despite notice. It stated that the filing of the complaint for illegal dismissal negated the claim of abandonment. The NLRC concluded that there

---

[10] Penned by Labor Arbiter Lilia S. Savari; *id*. at 132-142.

[11] *Id*. at 142.

was neither dismissal nor abandonment. Thus, she should be reinstated to her former position, but without backwages. The dispositive portion reads:

> **WHEREFORE,** premises considered, the instant appeal is **PARTLY GRANTED**. The decision dated December 22, 2011 insofar as the money award is concerned is affirmed *in toto*. However, appellees are directed to reinstate appellant to her former position or to a similar equivalent position without loss of seniority rights and other privileges sans backwages.
>
> SO ORDERED.[12]

Unconvinced, the petitioners filed a partial motion for reconsideration thereto. In its April 4, 2013 Resolution, the NLRC denied the same.

Aggrieved, the petitioners filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed decision, dated April 15, 2015, the CA modified the NLRC ruling. It wrote that reinstatement was not proper because such remedy was applicable only to illegally dismissed employees. It added that the petitioners did not dismiss her from employment as evidenced by several notices sent to her requiring her to report back to work and to explain the charges against her.

The CA, however, applied the doctrine of strained relations and ordered the payment of separation pay to Tanguin instead of compelling the petitioners to accept her in their employ. It opined that she was employed as a billing supervisor and such a sensitive position required no less than the trust and confidence of her employer as she was routinely charged with the care and custody of the funds and property of her employer; and that as a necessary consequence of the judicial controversy, an atmosphere of antipathy and antagonism may be generated as to adversely affect her efficiency and productivity if she would be reinstated. Hence, the CA disposed the case in this wise:

---

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

WHEREFORE, in view of the foregoing premises, the petition is **PARTLY GRANTED.** The Decision of the NLRC dated November 29, 2012 and the April 4, 2013 Resolution of the National Labor Relations Commission (NLRC) NLRC NCR CN. 01-01520-11/ NLRC LAC No. 02-000693-12 are hereby **MODIFIED** as follows:

1. Private respondent Ma. Realiza S. Tanguin is not entitled to reinstatement in view of the strained relationship between her and the petitioners;

2. In view of the petitioners' assertion of the doctrine of strained relations, they are in effect dismissing private respondent Tanguin on the ground of loss of confidence; and

3. As a measure of social justice, We award separation pay in favor of private respondent Ma. Realiza S. Tanguin.

Accordingly, let this case be remanded to the Labor Arbiter for the computation of the proper separation pay of private respondent Tanguin within fifteen (15) days from notice hereof.

SO ORDERED.[13]

The petitioners moved for reconsideration, but their motion was denied by the CA in the assailed October 13, 2015 Resolution.

ISSUE

WHETHER SEPARATION PAY IN LIEU OF REINSTATEMENT MAY BE AWARDED TO AN EMPLOYEE WHO WAS NOT DISMISSED FROM EMPLOYMENT.

The petitioners argued that the CA erred in awarding separation pay in the absence of any authorized cause for termination of employment; and that its conclusion that it sought to terminate respondent due to loss of confidence was refuted by the evidence on record.

In her Comment,[14] dated April 25, 2016, Tanguin averred that the petitioners sent her notices to return to work only after she had filed an illegal dismissal complaint against them before

---

[13] *Id*. at 47.

[14] *Id*. at 235-246.

the Labor Arbiter; that on October 27, 2010, she was barred from entering her workplace by Martin Martinez, the Cost Comptroller; and that the charges of negligence in computing the number of hours worked by her co-employees and habitual tardiness were merely concocted.

In their Reply,[15] dated January 4, 2017, the petitioners contended that separation pay could not be awarded on the ground of social justice when the dismissal was based on the just causes under Article 282 of the Labor Code; and that to grant separation pay in her favor would unjustly reward her for her infractions.

The Court's Ruling

Respondent was not dismissed from employment

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause.[16] But before the employer must bear the burden of proving that the dismissal was legal, the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[17] In *Machica v. Roosevelt Services Center, Inc.,*[18] the Court enunciated:

> The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.[19]

---

[15] *Id.* at 279-292.

[16] *Ledesma, Jr. v. National Labor Relations Commission,* 562 Phil. 939, 951 (2007).

[17] *Exodus International Construction Corporation v. Biscocho, et al.,* 659 Phil. 142, 154 (2011).

[18] 523 Phil. 199 (2006).

[19] *Id.* at 209-210.

Tanguin miserably failed to discharge this burden. She simply alleged that a security guard barred her from entering her workplace. Yet, she offered no evidence to prove the same. Absent any evidence that she was prevented from entering her workplace, what remained was her bare allegation, which could not certainly be considered substantial evidence. At any rate, granting that she was barred, there was a lawful basis therefor as she had been placed under preventive suspension pending investigation.

On the other hand, the petitioners were able to prove that they did not dismiss Tanguin from employment because she was still under investigation as evidenced by several notices[20] requiring her to report to work and submit an explanation as to the charges hurled against her. In fact, in its December 1, 2010 letter, they reminded her that she was still an employee of Claudia's Kitchen. Instead of answering the allegations against her, she opted to file an illegal dismissal complaint with the Labor Arbiter. Clearly, her complaint for illegal dismissal was premature, if not pre-emptive.

There was no abandonment on the part of respondent

The Court further agrees with the findings of the LA, the NLRC and the CA that Tanguin was not guilty of abandonment. *Tan Brothers Corporation of Basilan City v. Escudero*[21] extensively discussed abandonment in labor cases:

> As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 296] of the Labor Code. **To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work**

---

[20] *Rollo*, pp. 205-212.

[21] 713 Phil. 392 (2013).

or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[22] [Emphasis supplied]

In this case, records are bereft of any indication that Tanguin's failure to report for work was with a clear intent to sever her employment relationship with the petitioners. Mere absence or failure to report for work, even after a notice to return to work has been served, is not enough to amount to an abandonment of employment.[23]

Moreover, Tanguin's act of filing a complaint for illegal dismissal with prayer for reinstatement negates any intention to abandon her employment.[24] On the theory that the same is proof enough of the desire to return to work, the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, has been held to be totally inconsistent with a charge of abandonment.[25] To reiterate, abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.[26]

The grant of separation pay in lieu of reinstatement has no legal basis

Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided

---

[22] *Id.* at 400-401.

[23] *New Ever Marketing, Inc. v. Court of Appeals*, 501 Phil. 575, 586 (2005).

[24] *Pentagon Steel Corporation v. Court of Appeals*, 608 Phil. 682, 696-697 (2009).

[25] *Chavez v. NLRC*, 489 Phil. 444, 460 (2005).

[26] *Mallo v. Southeast Asian College, Inc.,* G.R. No. 212861, October 14, 2015.

in Articles 298[27] and 299[28] of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible.[29] On the other hand, an employee dismissed for any of the just causes enumerated under Article 297[30] of the same Code, being

---

[27] As renumbered pursuant to Department Advisory No. 01, Series of 2015. Formerly Article 283. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[28] Formerly Article 284. Disease as Ground for Termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to (1/2) one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[29] *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa-Katipunan*, 629 Phil. 247, 257 (2010).

[30] Formerly Article 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or wilful 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.

causes attributable to the employee's fault, is not, as a general rule, entitled to separation pay. The non-grant of such right to separation pay is premised on the reason that an erring employee should not benefit from their wrongful acts.[31] Under Section 7,[32] Rule I, Book VI of the Omnibus Rules Implementing the Labor Code, such dismissed employee is nonetheless entitled to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

As an exception, case law allows the grant of separation pay or financial assistance to a legally-dismissed employee as a measure of social justice or on grounds of equity. In *Philippine Long Distance Telephone Co. v. NLRC (PLDT)*,[33] the Court allowed the grant when the employee was validly dismissed for causes other than serious misconduct or those reflecting on his moral character.

The payment of separation pay and reinstatement are exclusive remedies.[34] The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.[35] To award separation pay in lieu of reinstatement to an employee who was never dismissed by his employer would only give *imprimatur* to the unacceptable act of an employee who is facing charges related to his employment, but instead of addressing the complaint against him, he opted to file an illegal dismissal case against his employer.

---

[31] *Security Bank Savings Corp. v. Singson,* G.R. No. 214230, February 10, 2016.

[32] Section 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

[33] 247 Phil. 641 (1988).

[34] *Bani Rural Bank, Inc. v. De Guzman, et al.,* 721 Phil. 84,100 (2013).

[35] *Id*.

In sum, separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character;[36] 4) where the dismissed employee's position is no longer available;[37] 5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them;[38] or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved.[39] In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer.

In *Dee Jay's Inn and Café v. Rañeses*,[40] the Court wrote that in **"a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee."**

There were cases, however, wherein the Court awarded separation pay in lieu of reinstatement to the employee even after a finding that there was neither dismissal nor abandonment. In *Nightowl Watchman & Security Agency, Inc. v. Lumahan*

---

[36] *PLDT v. NLRC*, *supra* note 33.

[37] *Bani Rural Bank, Inc. v. De Guzman, et al., supra* note 34.

[38] *Leopard Security and Investigation Agency v. Quitoy,* 704 Phil. 449, 459 (2013).

[39] *Bani Rural Bank, Inc. v. De Guzman, et al., supra* note 34.

[40] G.R. No. 191823, October 5, 2016.

(Nightowl),[41] the Court awarded separation pay in view of the findings of the NLRC that respondent stopped reporting for work for more than ten (10) years and never returned, based on the documentary evidence of petitioner.

The circumstances in this case, however, does not warrant an application of the exception. Thus, the general rule that no separation pay may be awarded to an employee who was not dismissed obtains in this case. In this regard, it is only proper for Tanguin to report back to work and for the petitioners to accept her, without prejudice to the on-going investigation against her.

No strained relations between the parties

Finally, the doctrine of strained relations, upon which the CA relied on to support its award of separation pay to Tanguin, has also no application in this case.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[42]

Strained relations must be demonstrated as a fact.[43] The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[44]

The CA, in declaring that the relations of the parties are so strained such that reinstatement is no longer feasible, merely

---

[41] G.R. No. 212096, October 14, 2015.

[42] *Bank of Lubao, Inc. v. Manabat and National Labor Relations Commission*, 680 Phil. 792, 801 (2012).

[43] *Paguio Transport Corporation v. NLRC*, 356 Phil. 158, 171 (1998).

[44] *Tenazas, et al. v. R. Villegas Taxi Transport,* G.R. No. 192998, April 2, 2014, 720 SCRA 467, 484.

stated that it would not be equitable for the petitioners to be ordered to maintain Taguin in their employ for it may only inspire vindictiveness on the part of the latter and that the filing of the illegal dismissal case created an atmosphere of antipathy and antagonism between the parties.[45]

That Taguin would be spiteful towards the petitioners, however, is a mere presumption without any factual basis. Further, the filing of an illegal dismissal case alone is not sufficient reason to engender a conclusion that the relationship between employer and employee is already strained. The doctrine on strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in strained relations; otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement.[46] Finally, it must be noted that Taguin herself is asking for her reinstatement, the same being one of the reliefs she prayed for in her Appeal[47] before the NLRC and even in her Comment[48] to the petition for review filed by the petitioners.

To recapitulate, there was neither dismissal nor abandonment. At the time Taguin initiated the illegal dismissal case, the complaint had no basis. The *status quo ante* was that she was being asked to explain the accusation against her. Instead of complying, she opted to file a complaint for illegal dismissal. It was premature, if not pre-emptive, which the Court cannot tolerate or accommodate. At this time, her plea for reinstatement, backwages and/or separation pay cannot be granted. Respondent should return to work and answer the complaints against her and the petitioners should accept her, without prejudice to the result of the investigation against her.

WHEREFORE, the petition is **GRANTED**. Respondent Ma. Realiza S. Tanguin is hereby ordered to **RETURN TO WORK**

---

[45] *Rollo,* p. 46.

[46] *Capili v. NLRC,* 337 Phil. 210, 216 (1997).

[47] *Rollo*, p. 154.

[48] *Id*. at 245.

within fifteen days from the receipt of this decision. Petitioners Claudia's Kitchen, Inc. and Enzo Squillantini are likewise ordered to **ACCEPT** respondent Ma. Realiza S. Tanguin, without prejudice to the result of the investigation against her.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Leonen,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

FIRST DIVISION

[G.R. No. 223708. June 28, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORIETO MONROYO *y* MAHAGUAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) IN RELATION TO REPUBLIC ACT NO. (RA) 7610; ACTS OF LASCIVIOUSNESS; ELEMENTS UNDER THE RPC AND UNDER RA 7610; THE ELEMENT OF LEWDNESS IS COMMON TO BOTH LAWS; "LEWD," DEFINED AND EXPLAINED.— [The] elements [Acts of Lasciviousness under Art. 336 of the RPC] are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (*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 twelve (12) years of age; and (3) that the offended party is another person of either sex. On the other hand, x x x [i]ts elements under Section 5 (b) of RA 7610 are: (1) the accused

---

[*] Per Special Order No. 2445 dated June 16, 2017

commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. In *Quimvel v. People*, the Court held that the allegation of "force and intimidation" is sufficient to classify the minor victim as one who is "exploited in prostitution or subjected to other sexual abuse." Common to both legal provisions is the element of lascivious conduct or lewdness. The term "lewd" is commonly defined as something indecent or obscene. It is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is a mental process that can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious.

2. ID.; ID.; ID.; PROPER PENALTY FOR THREE COUNTS OF ACTS OF LASCIVIOUSNESS UNDER THE RPC IN RELATION TO RA 7610; CIVIL LIABILITY.— Monroyo's conviction for three (3) counts of Acts of Lasciviousness is proper under Article 336 of the RPC in relation to Section 5 (b) of RA 7610. Applying the Indeterminate Sentence Law, Monroyo is hereby sentenced to suffer the penalty of imprisonment with an indeterminate period of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. Furthermore, in order to conform with prevailing jurisprudence, his civil liabilities are adjusted, in that he is ordered to pay the amounts of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, also for each count.

3. ID.; RPC IN RELATION TO THE ANTI-RAPE LAW OF 1997 (RA 8353); QUALIFIED RAPE; ELEMENTS, PRESENT IN CASE AT BAR.— Article 266-A(1) (a), in relation to Article 266-B of the RPC, as amended by RA 8353, defines and penalizes the crime of Rape, including the circumstances which qualify the penalty to be imposed[.] x x x The elements of Qualified Rape under these provisions are: (*a*) the victim is a female over twelve (12) years but under eighteen (18) years of age; (*b*) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (*c*) the offender has carnal knowledge of the victim either through force,

threat, or intimidation. A perusal of the records reveals that all these elements are present. Both the RTC and CA found credible BBB's categorical testimony that on November 18, 2003, Monroyo had carnal knowledge of her without her consent; that she was sixteen (16) years old at that time; and that Monroyo is her uncle, being the husband of her mother's half-sister.

4. ID.; ID.; ID.; CONVICTION OF THE ACCUSED IS MODIFIED FROM RAPE TO QUALIFIED RAPE; PENALTY AND CIVIL LIABILITY.— [F]or the reasons initially stated, his conviction is modified from Rape to Qualified Rape, which, based on Article 266-B of the RPC, as amended by RA 8353, is penalized with death. pursuant to RA 9346, courts shall impose the penalty of *reclusion perpetua* in lieu of the death penalty and the offender shall not be eligible for parole. As for his civil liability, jurisprudence states that when death is the imposable penalty for the crime committed but it cannot be imposed due to RA 9346, the Court shall award the following to BBB: (*a*) ₱100,000.00 as civil indemnity; (*b*) ₱100,000.00 as moral damages; and (*c*) ₱100,000.00 as 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

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Norieto Monroyo *y* Mahaguay (Monroyo) assailing the Decision[2] dated May 27, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06078, which affirmed the Joint Decision[3] in Crim. Case Nos. C-04-7785, C-04-7786 and

---

[1] See Notice of Appeal dated June 11, 2015; *rollo*, pp. 16-17.

[2] *Id.* at 2-15. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Normandie B. Pizarro and Zenaida T. Galapate-Laguilles concurring.

[3] CA *rollo*, pp. 49-57. Penned by Judge Tomas C. Leynes.

C-04-7787 and the Decision[4] in Crim. Case No. C-04-7788 both dated November 16, 2011 of the Regional Trial Court of Oriental Mindoro, Branch 40 (RTC), finding Monroyo guilty beyond reasonable doubt of three (3) counts of Acts of Lasciviousness and one (1) count of Rape under the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[5] otherwise known as "The Anti-Rape Law of 1997."

The Facts

On October 13, 2004, four (4) Informations were filed before the RTC, charging Monroyo of the crimes of Acts of Lasciviousness against AAA[6] and Qualified Rape against her sister, BBB, *viz.*:

Criminal Case No. C-04-7787 (Acts of Lasciviousness)

That on or about 24 August, 2003, at around 11 :30 o'clock in the morning, in the dwelling of complainant AAA located at Barangay San Isidro, Municipality of Victoria, Province of Oriental Mindoro,

---

[4] *Id*. at 58-67.

[5] Defined and penalized under Article 266-A in relation to 266-B of the RPC, as amended by RA 8353, entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, known as the "RE: RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN," effective November 15, 2004, (See footnote 4 in *People v. Cadano, Jr*., 729 Phil. 576, 578 (2014), citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]).

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, with force and intimidation, did and there willfully, unlawfully and feloniously, commit acts of lasciviousness on AAA, a fourteen (14) year-old-virgin, by then and there touching her private parts, against her will and without her consent, [an] act which debases, degrades or demeans the intrinsic worth and dignity of the said AAA, to her damage and prejudice.

Contrary to law.[7]

Criminal Case No. C-04-7786 (Acts of Lasciviousness)

That on or about 15 October, 2003, at around 10:30 o'clock in the morning, at Barangay San Isidro, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, with force and intimidation, did and there willfully, unlawfully and feloniously, commit acts of lasciviousness on AAA, a fourteen (14) year-old-virgin, by then and there touching her private parts, against her will and without her consent, [an] act which debases, degrades or demeans the intrinsic worth and dignity of the said AAA, to her damage and prejudice.

Contrary to law.[8]

Criminal Case No. C-04-7785 (Acts of Lasciviousness)

That on or about 13 October, 2003, at around 3:00 o'clock in the afternoon, in the dwelling of complainant AAA located at Barangay San Isidro, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, with force and intimidation, did then and there willfully, unlawfully and [feloniously], commit acts of lasciviousness on AAA, a fourteen (14) year-old-virgin, by then and there touching her private parts, against her will and without her consent, [an] act which debases, degrades or demeans the intrinsic worth and dignity of the said AAA, to her damage and prejudice.

Contrary to law.[9]

---

[7] *Rollo*, p. 3.

[8] *Id.*

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

Criminal Case No. C-04-7788 (Rape)

That on or about November 18, 2003, at around 11:00 o'clock in the evening, in the dwelling of complainant BBB,[10] located at Barangay San Isidro, Municipality of Victoria, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire and by means of force and intimidation, willfully, unlawfully and feloniously have carnal knowledge of one BBB, a sixteen (16) year-old-virgin, against the will and without the consent of said private complainant, thereby violating her person and chastity, [an] act of sexual abuse which debase[s], degrade[s] and demean[s] her intrinsic worth and dignity as a human being, to the damage and prejudice of said private complainant.

In the commission of the offense the qualifying circumstance of relationship is attendant, the accused being a relative of the complainant by affinity within the 3rd civil degree and the complainant being then under eighteen years of age.

Contrary to law.[11]

On the charges of Acts of Lasciviousness, the prosecution alleged that at around 11:30 in the morning of August 24, 2003, AAA was alone in her house when her uncle, Monroyo, arrived. While AAA was cleaning the house, Monroyo approached her, touched her private organ, and warned her against telling her parents about what happened.[12]

The incident was repeated on October 13, 2003, at around 3 o'clock in the afternoon, when Monroyo went to AAA' s house to ask for cigarette sticks. AAA went out to buy the cigarette sticks, handed them to Monroyo, and went to the living room to resume cleaning the house. Monroyo followed her to the living room and once more, touched her private organ.[13]

---

[10] *Id*. at 4.

[11] *Id*.

[12] *Id*. at 5.

[13] *Id*.

Finally, at around 10:30 in the morning of October 15, 2003, AAA went to Monroyo' s house looking for her cousin, Norton, but the latter was not at home. When she was about to leave, Monroyo touched her private organ.[14]

On the charge of Rape, the prosecution claimed that on the night of November 18, 2003, BBB, a sixteen (16) year-old girl, slept on a bed with her siblings, AAA and EEE. At around 11 o'clock in the evening, BBB woke up when she felt someone touching her breast. She saw Monroyo, the husband of her mother's half-sister,[15] sitting on the floor beside their bed. Her uncle instructed her to sit down on the floor and told her not to make any noise. He then forced her to lie down on the floor and started kissing her all over her body while BBB cried. He forcibly removed her shorts and panty and thereafter stood up to remove his shorts and brief. He then placed himself on top of her, inserted his penis into her private organ, and made a push and pull motion. BBB cried loudly but Monroyo covered her mouth with his hand. After satisfying his lust, he put on his clothes and threatened to kill BBB and her family if she tells anyone about what happened. BBB did not see him again after the incident.[16]

In March 2004, BBB mustered enough courage to tell her mother about the incident when the latter saw her crying. BBB subjected herself to a medical examination administered by Municipal Health Officer Dr. Ma. Virginia R. Valdez (Dr. Valdez), who found healed hymenal lacerations that could have been caused by a hard object, like an erect penis.[17]

For his part, Monroyo denied the accusations against him and testified that on October 15, 2003, AAA and BBB asked for money from him to buy junk food while he was buying cigarettes from a store. When he refused to give them money,

---

[14] *Id*.

[15] See CA *rollo*, p. 61.

[16] See *rollo*, p. 6.

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

they grabbed the belt bag tied around his belt. Monroyo tried to retrieve the bag by tickling them on the side of their bodies but the bag was ripped in the process. Monroyo slapped AAA and BBB for destroying the bag and then he went home. He claimed that he does not know why the cases were filed against him by complainants but speculated that it was probably because of a familial tiff with the latter's father regarding the house that he and his wife were residing in.[18]

The RTC Ruling

In a Joint Decision[19] dated November 16, 2011, the RTC found Monroyo guilty beyond reasonable doubt of three (3) counts of Acts of Lasciviousness (Crim. Case Nos. C-04-7785, C-04-7786 and C-04-7787) and accordingly, sentenced him to suffer in each case the penalty of two (2) months and one (1) day of *arresto mayor* in its medium period, as minimum to four (4) years and two (2) months of *prision correccional* in its medium period, as maximum, and ordered him to pay ₱50,000.00 as civil indemnity, as well as ₱25,000.00 as moral and exemplary damages.[20]

The RTC gave more credence to AAA' s testimony clearly and convincingly narrating the details of each lascivious conduct committed by Monroyo against her. It added that AAA had no ill motive against Monroyo, while the latter's excuses were too shallow and insignificant for AAA to concoct a story that she was molested.[21]

In another Decision[22] dated November 16, 2011, the RTC similarly found Monroyo guilty beyond reasonable doubt of the crime of Rape (Crim. Case No. C-04-7788), and accordingly, imposed the penalty of *reclusion perpetua*, and ordered him to

---

[18] See CA *rollo*, pp. 62-63.

[19] *Id*. at 49-57.

[20] *Id*. at 57.

[21] *Id*. at 56.

[22] *Id*. at 58-67.

pay BBB ₱l00,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[23]

The RTC gave full faith and credence to BBB's testimony, as she was likewise able to narrate the details of how Monroyo raped her inside their house, noting further that her youth and immaturity are generally badges of truth. The foregoing account was corroborated by the medical certificate issued by the physician who examined BBB (*i.e.*, Dr. Valdez) that confirmed the latter's hymenal lacerations, which could have been caused by a hard object, like an erect penis. On the other hand, Monroyo merely interposed the defense of bare denial, which cannot be given greater weight than the positive declaration of a credible witness like BBB. The RTC however, did not consider the special qualifying circumstances of relationship and minority because these were not purportedly alleged in the Information.[24]

Dissatisfied, Monroyo elevated his case to the CA.

The CA Ruling

In a Decision[25] dated May 27, 2015, the CA affirmed the RTC's ruling, observing that the trial court's findings as to the credibility of the witnesses and their testimonies deserve the highest respect absent any showing that it overlooked, misunderstood, or misapplied material facts or circumstances.[26] The CA added that the minor inconsistencies in AAA and BBB' s testimonies do not refer to the essential elements of the crimes; thus, they are not grounds to reverse the conviction.[27] Notably, the CA no longer discussed the attendant circumstances of relationship and minority in the Rape case.

Aggrieved by his impending conviction, Monroyo filed the present appeal.[28]

---

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

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

[25] *Rollo* pp. 2-15.

[26] *Id*. at 9.

[27] *Id*.

[28] See Notice of Appeal dated June 11, 2015; *id*. at 16-17.

The Issue Before the Court

The main issue for the Court's resolution is whether or not Monroyo's conviction for three (3) counts of Acts of Lasciviousness and one (1) count of Rape should be upheld.

The Court's Ruling

The appeal is bereft of merit.

The Court first examines the charges of Acts of Lasciviousness against Monroyo in Crim. Case Nos. C-04-7785, C-04-7786 and C-04-7787, committed against AAA.

Preliminarily, although the three Informations designated the crime committed only as "Acts of Lasciviousness," the facts alleged therein pertain not only to violations of Article 336 of the RPC but also of Section 5 (b) of RA 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." It is settled that a designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense.[29] Nevertheless, the erroneous reference to the law violated does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged.[30] As the Court had ruled, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the legal provision alleged to have been violated, which are mere conclusions of law, but by the actual recital of facts in the information.[31] In the present case, the recital of facts in the Informations constitute violations of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610.

Article 336 of the RPC provides:

Article 336. *Acts of Lasciviousness.* – Any person who shall commit any act of lasciviousness upon other persons of either sex, under

---

[29] *Malto v. People*, 560 Phil. 119, 135 (2007).

[30] See *id*. at 135-136.

[31] *People v. P02 Valdez*, 679 Phil. 279, 293-294(2012).

any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

Its elements are: *(1)* that the offender commits any act of lasciviousness or lewdness; (2) that it is done *(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 twelve (12) years of age; and (3) that the offended party is another person of either sex.[32]

On the other hand, Section 5 (b) of RA 7610 states:

Section 5. *Child Prostitution and Other Sexual Abuse*. — x x x

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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; x x x

x x x x x x x x x

(Emphasis supplied)

The elements under Section 5 (b) of RA 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.[33] In *Quimvel v. People*,[34] the Court held that the allegation of "force and intimidation" is sufficient to classify the minor victim as one who is "exploited in prostitution or subjected to other sexual abuse."[35]

Common to both legal provisions is the element of lascivious conduct or lewdness. The term "lewd" is commonly defined as

---

[32] *Amployo v. People*, 496 Phil. 747, 755 (2005). Citation omitted.

[33] *Imbo v. People*, G.R. No. 197712, April 20, 2015, 756 SCRA 196, 205.

[34] G.R. No. 214497, April 18, 2017.

[35] *Id*.

something indecent or obscene. It is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is a mental process that can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious.[36]

In this case, the Court agrees with the findings of the RTC, as affirmed by the CA, that the prosecution was able to establish the presence of the aforementioned elements. As correctly observed by the lower courts, AAA clearly and convincingly narrated in detail each lascivious act committed by Monroyo against her. On various occasions, *i.e.*, August 24, October 13 and 15, 2003, Monroyo succeeded in touching the latter's private organ. The Court finds that Monroyo' s overt acts were done against AAA' s will and much more, committed without any other justifiable reason, hence, demonstrating its lewd character. AAA also sufficiently established that she was a minor during that time. In this relation, it should be pointed out that Monroyo was AAA' s uncle and thus, exercised moral ascendancy and influence over her, which according to case law, constitutes intimidation.[37]

Verily, AAA's testimony is worthy of full faith and credence as there is no proof that she was motivated to falsely accuse Monroyo of the crimes charged. To this, it may not be amiss to state that in several cases, the Court has observed that no young and decent girl (like AAA in this case) would fabricate a story of sexual abuse, subject herself to undergo public trial, with concomitant ridicule and humiliation, if she is not impelled by a sincere desire to put behind bars the person who assaulted her.[38] Ultimately, the credibility of AAA's testimony, as well as Monroyo's opposite account involves findings of fact which the Court does not generally review. Case law dictates that factual findings of the trial court, particularly when affirmed

---

[36] *Amployo v. People, supra* note 32, at 756. Citations omitted.

[37] *People v. Magbanua,* 576 Phil. 642, 648 (2008).

[38] *Amployo v. People, supra* note 32, at 757. Citation omitted.

by the CA, are binding on the Court barring arbitrariness and oversight of some fact or circumstance of weight and substance,[39] of which there are none in this case.

In view of the foregoing, Monroyo' s conviction for three (3) counts of Acts of Lasciviousness is proper under Article 336 of the RPC in relation to Section 5 (b) of RA 7610. Applying the Indeterminate Sentence Law,[40] Monroyo is hereby sentenced to suffer the penalty of imprisonment with an indeterminate period of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.[41] Furthermore, in order to conform with prevailing jurisprudence,[42] his civil liabilities are adjusted, in that he is ordered to pay the amounts of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, also for each count.

Separately, Monroyo was charged with the crime of Qualified Rape in Crim. Case No. C-04-7788, this time committed against AAA's sister, BBB. At the outset, it should be clarified that, contrary to the RTC's observation, the qualifying circumstances of minority and relationship were sufficiently alleged in the Information in Crim. Case No. C-04-7788, the pertinent portion of which reads:

---

[39] *Id.* Citation omitted.

[40] Act No. 4103, entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES," approved on December 5, 1933. This Act was later amended by RA 4203 entitled "AN ACT TO AMEND SECTIONS THREE AND FOUR OF ACT NUMBERED FOUR THOUSAND ONE HUNDRED AND THREE, AS AMENDED, OTHERWISE KNOWN AS THE INDETERMINATE SENTENCE LAW," which was approved on June 19, 1965.

[41] *People v. Leonard*o, 638 Phil. 161, 198-199 (2010).

[42] See *People v. Bandril,* G.R. No. 212205, July 6, 2015, 761 SCRA 665, 677, citing *People v. Dominguez, Jr.,* 650 Phil. 492, 523-524 (2010).

In the commission of the offense the qualifying circumstance of **relationship** is attendant, the accused being a relative of the complainant by affinity within the 3rd civil degree and the **complainant being then under eighteen years of age**.[43] (Emphases supplied)

The presence of these circumstances is readily verifiable from the records of this case. As to BBB's minority (*i.e.*, sixteen years old at the time the crime was committed), the prosecution formally offered a photocopy of her birth certificate, the authenticity of which was not in any way disputed by the defense.[44] Meanwhile, the fact that Monroyo is BBB' s relative by affinity within the third civil degree was attested to by BBB, who testified that Monroyo is the husband of her mother's half-sister.[45] In fact, Monroyo admitted their relationship on cross-examination, stating that "his wife is the sister of the mother of [BBB]."[46]

Well-settled is the rule that an appeal in a criminal case opens the entire case for scrutiny on any question, even one not raised by the parties as errors,[47] and that the appeal confers the appellate court with full jurisdiction over the case, enabling the court to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[48] Thus, given that the circumstances of minority and relationship were alleged and proven in this case, the Court examines Monroyo' s criminal liability for Qualified Rape as charged.

---

[43] *Rollo*, p. 4.

[44] In *People v. Villanueva* (549 Phil. 747, 765-766 [2007]), the Court held that since a birth certificate is a public record in the custody of the local civil registrar, its photocopy is admissible as secondary evidence to prove its contents if the opponent fails to dispute them.

[45] See CA *rollo*, p. 61.

[46] *Id.* at 63.

[47] *People v. Mirandilla, Jr.*, 670 Phil. 397, 415 (2011), citing *People v. Madsali*, 625 Phil. 431, 451 (2010).

[48] *People v. Comboy,* G.R. No. 218399, March 2, 2016, citing *Manansala v. People*, G.R. No. 215424, December 9, 2015, 777 SCRA 563, 569.

Article 266-A (1) (a), in relation to Article 266-B of the RPC, as amended by RA 8353, defines and penalizes the crime of Rape, including the circumstances which qualify the penalty to be imposed:

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;

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 of the victim.

x x x x x x x x x

(Emphases supplied)

The elements of Qualified Rape under these provisions are: *(a)* the victim is a female over twelve (12) years but under eighteen (18) years of age; *(b)* the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and *(c)* the offender has carnal knowledge of the victim either through force, threat, or intimidation.[49]

A perusal of the records reveals that all these elements are present. Both the RTC and the CA found credible BBB's

---

[49] *People v. Balcueva*, 762 Phil. 730, 736 (2015).

categorical testimony that on November 18, 2003, Monroyo had carnal knowledge of her without her consent; that she was sixteen (16) years old at that time; and that Monroyo is her uncle, being the husband of her mother's half-sister. In addition, the results of Dr. Valdez's medical examination corroborated BBB's account. The lower courts also noted BBB's testimony that Monroyo previously molested her five (5) times prior to the rape incident but she opted not to inform her parents due to Monroyo' s threats against her.[50]

As in the Acts of Lasciviousness cases, the Court defers to the findings of fact of the trial court, as affirmed by the CA. Jurisprudentially settled is the principle that if a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof. Putting more emphasis, the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal,[51] as in this case.

At this juncture, it should be emphasized that Monroyo only proffered the defense of denial, which the courts *a quo*, found to be too shallow and insignificant so as to impel BBB to falsely charge her uncle and publicly disclose that she was raped. Case law edifies that "[d]enial cannot prevail over [a] private complainant's direct, positive and categorical assertion that rings with truth. Denial is inherently a weak defense which cannot outweigh positive testimony. As between a categorical statement that has the earmarks of truth on the one hand and bare denial, on the other, the former is generally held to prevail."[52]

Based on the foregoing, Monroyo' s criminal liability in Crim. Case No. C-04-7788 is thus upheld. However, for the reasons

---

[50] CA *rollo*, p. 65.

[51] *People v. Lumaho*, 744 Phil. 233, 243-244 (2014).

[52] *People v. Bitancor*, 441 Phil. 758, 769 (2002). Citation omitted.

initially stated, his conviction is modified from Rape to Qualified Rape, which, based on Article 266-B of the RPC, as amended by RA 8353, is penalized with death. Pursuant to RA 9346,[53] courts shall impose the penalty of *reclusion perpetua* in lieu of the death penalty and the offender shall not be eligible for parole. As for his civil liability, jurisprudence states that when death is the imposable penalty for the crime committed but it cannot be imposed due to RA 9346, the Court shall award the following to BBB: *(a)* ₱100,000.00 as civil indemnity; *(b)* ₱100,000.00 as moral damages; and *(c)* ₱100,000.00 as exemplary damages.[54]

Finally, the Court imposes interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid, for each count of Acts of Lasciviousness and Qualified Rape.[55]

WHEREFORE, the appeal is **DENIED**. The Decision dated May 27, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06078 is hereby **AFFIRMED** with **MODIFICATIONS**, finding accused-appellant Norieto Monroyo *y* Mahaguay **GUILTY** beyond reasonable doubt of three (3) counts of Acts of Lasciviousness and one (1) count of Qualified Rape. Accordingly:

(a) In Criminal Case Nos. C-04-7785, C-04-7786, C-04-7787, Monroyo is **SENTENCED** to suffer the penalty of imprisonment with an indeterminate period of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, for each count and is **ORDERED** to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, also for each count;

(b) In Criminal Case No. C-04-7788, Monroyo is **SENTENCED** to suffer the penalty of *reclusion perpetua,* without eligibility

---

[53] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," approved on June 24, 2006.

[54] *People v. Jugueta,* G.R. No. 202124, April 5, 2016, 788 SCRA 331, 377.

[55] *Id*. at 388.

for parole, and is **ORDERED** to pay BBB the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; and

(c) All monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.

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

Caguioa, J., concurs consistent with his opinion in *Peo. vs. Caoili,* G.R. # 196342.

FIRST DIVISION

[G.R. No. 223844. June 28, 2017]

DANILO CALIVO CARIAGA, *petitioner, vs.* **EMMANUEL D. SAPIGAO and GINALYN C. ACOSTA**, *respondents.*

SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; DEPARTMENT OF JUSTICE; NATIONAL PROSECUTION SERVICE (NPS); THE PREVAILING APPEALS PROCESS IN THE NPS WITH REGARD TO COMPLAINTS SUBJECT OF PRELIMINARY INVESTIGATION WOULD DEPEND ON WHERE THE COMPLAINT WAS FILED AND WHICH COURT HAS ORIGINAL JURISDICTION OVER THE CASE; CASE AT BAR.— The Department of Justice's (DOJ) Department Circular No. 70 dated July 3, 2000, entitled the "2000 NPS Rule on Appeal," which governs the appeals process in the National Prosecution Service (NPS), provides that resolutions of, *inter alia*, the RSP, in cases subject

of preliminary investigation/reinvestigation shall be appealed by filing a verified petition for review before the SOJ. However, this procedure was immediately amended by the DOJ's Department Circular No. 70-A dated July 10, 2000, entitled "Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases," x x x The foregoing amendment is further strengthened by a later issuance, *i.e.*, Department Circular No. 018-14 dated June 18, 2014, entitled "Revised Delegation of Authority on Appealed Cases," x x x A reading of the foregoing provisions shows that the prevailing appeals process in the NPS with regard to complaints subject of preliminary investigation would depend on two factors, namely: where the complaint was filed, *i.e.*, whether in the NCR or in the provinces; and which court has original jurisdiction over the case, *i.e.*, whether or not it is cognizable by the MTCs/MeTCs/MCTCs. Thus, the rule shall be as follows: (a) If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the ORSP, which ruling shall be with finality; (b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before SOJ, which ruling shall be with finality; (c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the Prosecutor General, whose ruling shall be with finality; (d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the SOJ, whose ruling shall be with finality; (e) Provided, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire National Prosecution Service, review, modify, or reverse the ruling of the ORSP or the Prosecutor General, as the case may be. x x x Applying the prevailing rule on the appeals process of the NPS, the ruling of the ORSP as regards Falsification of Public Documents may still be appealed to the SOJ before resort to the courts may be availed of. On the other hand, the ruling of the ORSP pertaining to False Certification and Slander by Deed should already be deemed final – at least insofar as the NPS is concerned – and thus, may already be elevated to the courts.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; WHEN COURTS MAY OVERTURN THE FINDINGS OF THE PUBLIC PROSECUTOR IN A PRELIMINARY INVESTIGATION PROCEEDING ON THE GROUND OF GRAVE ABUSE OF DISCRETION, GUIDING PRINCIPLES; NOT PRESENT IN CASE AT BAR.— In the recent case of *Hilbero v. Morales, Jr.*, the Court reiterated the guiding principles in determining whether or not the courts may overturn the findings of the public prosecutor in a preliminary investigation proceedings on the ground of grave abuse of discretion in the exercise of his/her functions, *viz.*: A public prosecutor's **determination of probable cause — that is, one made for the purpose of filing an information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration**. x x x **To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same**. **In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. x x x** In the instant case, a judicious perusal of the records reveals that the ORSP correctly ruled that there is no probable cause to indict respondents of the crimes of Slander by Deed and False Certification. As aptly found by the ORSP, there was no improper motive on the part of respondents in making the blotter entries as they were made in good faith; in the performance of their official duties as barangay officials; and without any intention to malign, dishonor, or defame Cariaga. Moreover, the statements contained in the blotter entries were confirmed by disinterested parties who likewise witnessed the incidents recorded therein. On the other hand, Cariaga's insistence that the blotter entries were completely false essentially rests on mere self-serving assertions that deserve no weight in law. Thus, respondents

cannot be said to have committed the crime of Slander by Deed. Furthermore, suffice it to say that the mere act of authenticating photocopies of the blotter entries cannot be equated to committing the crime of False Certification under the law. In sum, the ORSP correctly found no probable cause to indict respondents of the said crimes.

APPEARANCES OF COUNSEL

Oscar A. Corpuz, Jr. for petitioner.
Viray Dinos Viray & Associates Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated June 17, 2015[2] and March 17, 2016[3] of the Court of Appeals (CA) in CA-G.R. SP No. 140206 dismissing petitioner Danilo Calivo Cariaga's (Cariaga) petition for review[4] before it on the ground of non-exhaustion of administrative remedies.

The Facts

The instant case stemmed from a Complaint Affidavit[5] filed by Cariaga before the Office of the Provincial Prosecutor (OPP) — Urdaneta City, Pangasinan accusing respondents Emmanuel D. Sapigao (Sapigao) and Ginalyn C. Acosta (Acosta; collectively, respondents) of the crimes of Falsification of Public Documents, False Certification, and Slander by Deed, defined and penalized under Articles 171, 174, and 359 of the Revised

---

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

[2] *Id*. at 19-23. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

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

[4] Dated April 24, 2015. CA *rollo*, pp. 3-12.

[5] Dated February 25, 2014. *Id*. at 45-47.

Penal Code (RPC). In the said complaint, Cariaga alleged that respondents, in their respective capacities as Barangay Chairman and Secretary of Brgy. Carosucan Sur, Asingan, Pangasinan, made two (2) spurious entries in the barangay blotter, *i.e.*, (*a*) Entry No. 00054[6] dated August 3, 2012[7] stating that an unnamed resident reported that someone was firing a gun inside Cariaga's compound, and that when Sapigao went thereat, he was able to confirm that the gunfire came from inside the compound and was directed towards the adjacent ricefields; and (*b*) Entry No. 00057[8] dated September 26, 2012 stating that a concerned but unnamed resident reported to Sapigao that Cariaga and his companions attended the funeral march of former Kagawad Rodrigo Calivo, Sr. (Calivo, Sr.) with firearms visibly tucked in their waists (blotter entries). According to Cariaga, the police authorities used the blotter entries to obtain a warrant for the search and seizure operation made inside his residence and cattle farm on December 18, 2012. While such operation resulted in the confiscation of a firearm and several ammunitions, the criminal case for illegal possession of firearms consequently filed against him was dismissed by the Regional Trial Court of Urdaneta City.[9] Claiming that the statements in the blotter entries were completely false and were made to dishonor and discredit him, Cariaga filed the said complaint, docketed as NPS-I-01e-INV-14B-00084.[10]

In his defense,[11] Sapigao denied the accusations against him, maintaining that the blotter entries were true, as he personally witnessed their details. In this regard, he presented the Joint

---

[6] *Id*. at 48.

[7] Erroneously dated "August 13, 2012" in the Complaint Affidavit (see *id.* at 46).

[8] *Id*. at 49.

[9] See Resolution in Crim. Case No. U-18895 dated October 21, 2013 issued by Presiding Judge Elizabeth L. Berdal; *id*. at 51-54 .

[10] See *id*. at 15-16 and 31-32.

[11] See Counter-Affidavit dated April 1, 2014; *id*. at 56-57.

Affidavit[12] executed by Barangay *Kagawads* Elpidio Cariaga, Metrinio Dela Cruz, Greg Turalba, and Ex-Barangay *Kagawad* Jaime Aguida attesting that: (*a*) during the funeral march of Calivo, Sr., they observed that Cariaga and his employees had handguns tucked into their waists; and (*b*) the firing of guns was a common occurrence in Cariaga's farm.[13] For her part,[14] Acosta averred that she was merely performing her duties as Barangay Secretary when she certified as true copies the photocopies of the aforesaid blotter entries requested by the police authorities.[15]

The OPP's Ruling

In a Resolution[16] dated April 10, 2014, the OPP dismissed the complaint for lack of probable cause. It found that the questioned blotter entries were all made in good faith and merely for recording purposes; done in the performance of respondents' official duties; and based on personal knowledge of what actually transpired. In this relation, the OPP pointed out that Cariaga's complaint and supporting affidavits, which mainly consist of a general and blanket denial of the incidents described in the blotter entries, could not prevail over the positive and categorical testimonies of Sapigao and his witnesses.[17]

Cariaga moved for reconsideration[18] which was, however, denied in a Resolution[19] dated July 28, 2014. Aggrieved, he

---

[12] Dated April 1, 2014. *Id*. at 64.

[13] See *id*. at 16 and 32-33.

[14] See Counter Affidavit dated April 1, 2014; *id*. at 58.

[15] See *id*. at 16 and 33.

[16] *Id*. at 31-34. Penned by Assistant Provincial Prosecutor Adriano P. Cabida, recommended for approval by Assistant Provincial Prosecutor Ephraim S. Tomboc, and approved by Provincial Prosecutor Abraham L. Ramos II.

[17] See *id*. at 33-34.

[18] See Motion for Reconsideration with Prayer for Inhibition and to Assign Case to Another Investigating Prosecutor and Review Panel dated June 3, 2014; *id*. at 35-41.

[19] *Id*. at 42-43.

filed a petition for review[20] before the Office of the Regional State Prosecutor (ORSP) – Urdaneta City, Pangasinan.[21]

The ORSP's Ruling

In a Resolution[22] dated January 5, 2015, the ORSP affirmed the OPP's ruling. The ORSP found that absent any showing of ill-motive on respondents' part in making the blotter entries, there can be no basis to charge them of Falsification of Private Documents. This is especially so as the statements therein were supported by testimonies of several witnesses, and there is colorable truth to the same, since the search conducted by the police authorities in Cariaga's home and cattle farm resulted in the seizure of a firearm and several ammunitions and the eventual filing of a criminal case against Cariaga for illegal possession of firearms.[23] Further, the ORSP ruled that the blotter entries were not intended to malign, dishonor, nor defame Cariaga; as such, respondents could not be said to have committed the crime of Slander by Deed.[24] Finally, the ORSP pointed out that Acosta's mere authentication of the photocopies of the blotter entries cannot be equated to issuing a false certification so as to indict her of such crime.[25]

Undaunted, Cariaga moved for reconsideration,[26] but the same was denied in a Resolution[27] dated March 14, 2015. Thus, he filed a petition for review[28] before the CA, docketed as CA-G.R. SP No. 140206.

---

[20] Not attached to the records.

[21] See *rollo*, p. 6.

[22] CA *rollo*, pp. 15-20. Penned by Regional Prosecutor Nonnatus Caesar R. Rojas.

[23] See *id*. at 18.

[24] *Id*. at 19.

[25] See *id*. at 19-20.

[26] See motion for reconsideration dated February 3, 2015; *id*. at 21-25.

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

[28] See *id*. at 3-14.

The CA Ruling

In a Resolution[29] dated June 17, 2015, the CA dismissed Cariaga's petition before it. It held that the ORSP is not the final authority in the hierarchy of the National Prosecution Service, as one could still appeal an unfavorable ORSP ruling to the Secretary of Justice (SOJ). As such, Cariaga's direct and immediate recourse to the CA to assail the ORSP ruling without first filing a petition for review before the SOJ violated the principle of exhaustion of administrative remedies. Thus, the dismissal of Cariaga's petition for review is warranted.[30]

Unperturbed, Cariaga filed a motion for reconsideration,[31] but it was denied in a Resolution[32] dated March 17, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly dismissed Cariaga's petition for review before it on the ground of non-exhaustion of administrative remedies.

The Court's Ruling

The petition must be denied.

I.

To recapitulate, Cariaga's petition for review before the CA was dismissed on the ground of non-exhaustion of administrative remedies as he did not elevate the adverse ORSP ruling to the SOJ before availing of judicial remedies.

The Department of Justice's (DOJ) Department Circular No. 70[33] dated July 3, 2000, entitled the "2000 NPS Rule on

---

[29] *Rollo*, pp. 19-23.

[30] See *id*. at 20-23.

[31] Dated July 20, 2015. *Id*. at 24-26.

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

[33] (September 1, 2000).

Appeal," which governs the appeals process in the National Prosecution Service (NPS), provides that resolutions of, *inter alia*, the RSP, in cases subject of preliminary investigation/reinvestigation shall be appealed by filing a verified petition for review before the SOJ.[34] However, this procedure was immediately amended by the DOJ's Department Circular No. 70-A[35] dated July 10, 2000, entitled "Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases," pertinent portions of which read:

DEPARTMENT CIRCULAR NO. 70-A

SUBJECT: Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases

In order to expedite the disposition of appealed cases governed by Department Circular No. 70 dated July 3, 2000 ("2000 NPS RULE ON APPEAL"), **all petitions for review of resolutions of Provincial/City Prosecutors in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts**, except in the National Capital Region, **shall be filed with the Regional State Prosecutor concerned who shall resolve such petitions with finality** in accordance with the pertinent rules prescribed in the said Department Circular.

The foregoing delegation of authority notwithstanding, the Secretary of Justice may, pursuant to his power of supervision and control over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases. (Emphases and underscoring supplied)

As may be gleaned above, Department Circular No. 70-A delegated to the ORSPs the authority to **rule with finality** cases subject of preliminary investigation/reinvestigation appealed before it, provided that: (*a*) the case is not filed in the National Capital Region (NCR); and (*b*) the case, should it proceed to the courts, is cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts

---

[34] See Sections 1 and 4 of DOJ Circular No. 70.

[35] (September 1, 2000).

(MeTCs, MTCs, and MCTCs) – which includes not only violations of city or municipal ordinances, but also all offenses punishable with imprisonment **not exceeding six (6) years**, irrespective of the amount of fine, and regardless of other imposable accessory or other penalties attached thereto.[36] This is, however, without prejudice on the part of the SOJ to review the ORSP ruling should the former deem it appropriate to do so in the interest of justice. The foregoing amendment is further strengthened by a later issuance, *i.e.*, Department Circular No. 018-14[37] dated June 18, 2014, entitled "Revised Delegation of Authority on Appealed Cases," pertinent portions of which read:

DEPARTMENT CIRCULAR NO. 018-14

SUBJECT: Revised Delegation of
Authority on Appealed Cases

In the interest of service and pursuant to the provisions of existing laws with the objective of institutionalizing the Department's Zero Backlog Program on appealed cases, the following guidelines shall be observed and implemented in the resolution of appealed cases on Petition for Review and Motions for Reconsideration:

1. Consistent with Department Circular No. 70-A, all appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, shall be by way of a petition for review to the concerned province or city. The Regional Prosecutor shall resolve the petition for review with finality, in accordance with the rules prescribed in pertinent rules and circulars of this Department. Provided, however, that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Regional Prosecutor in these appealed cases.

---

[36] See Section 32 of *Batas Pambansa Blg.* 129, entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980," as amended (August 14, 1981).

[37] (July 1, 2014).

2. Appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in all other cases shall be by way of a petition for review to the Office of Secretary of Justice.

3. Appeals from resolutions of the City Prosecutors in the National Capital Region in cases cognizable by Metropolitan Trial Courts shall be by way of a petition for review to the Prosecutor General who shall decide the same with finality. Provided, however that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Prosecutor General in these appealed cases.

4. Appeals from resolutions of the City Prosecutors in the National Capital Region in all other cases shall be by way of a petition for review to the Office of the Secretary.

x x x x x x x x x

This Circular supersedes all inconsistent issuances, takes effect on 01 July 2014 and shall remain in force until further orders.

For guidance and compliance.

A reading of the foregoing provisions shows that the prevailing appeals process in the NPS with regard to complaints subject of preliminary investigation would depend on two factors, namely: where the complaint was filed, *i.e.*, whether in the NCR or in the provinces; and which court has original jurisdiction over the case, *i.e.*, whether or not it is cognizable by the MTCs/MeTCs/MCTCs. Thus, the rule shall be as follows:

(a) If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the ORSP, which ruling shall be with finality;

(b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before SOJ, which ruling shall be with finality;

(c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the Prosecutor General, whose ruling shall be with finality;

(d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the SOJ, whose ruling shall be with finality;

(e) Provided, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire National Prosecution Service, review, modify, or reverse the ruling of the ORSP or the Prosecutor General, as the case may be.

In the instant case, Cariaga filed a complaint before the OPP in Pangasinan (*i.e.*, outside the NCR) accusing respondents of committing the crimes of Falsification of Public Documents, False Certification, and Slander by Deed, defined and penalized under Articles 171, 174, and 359 of the RPC. Of the crimes charged, only False Certification and Slander by Deed are cognizable by the MTCs/MeTCs/MCTCs,[38] while Falsification of Public Documents is cognizable by the Regional Trial Courts.[39] Applying the prevailing rule on the appeals process of the NPS, the ruling of the ORSP as regards Falsification of Public Documents may still be appealed to the SOJ before resort to the courts may be availed of. On the other hand, the ruling of the ORSP pertaining to False Certification and Slander by Deed should already be deemed final — at least insofar as the NPS is concerned — and thus, may already be elevated to the courts.

---

[38] Both crimes of False Certification and Slander by Deed are punishable by *arresto mayor* in its maximum period to *prision correccional* in its minimum period, which is imprisonment for a period ranging from four (4) months and one (1) day to two (2) years and four (4) months. See Articles 174 and 359, in relation to Article 77 of the RPC.

[39] Falsification of Public Document is punishable by *prision mayor*, which is imprisonment for a period ranging from six (6) years and one (1) day to twelve (12) years. See Article 171, in relation to Article 27 of the RPC.

Verily, the CA erred in completely dismissing Cariaga's petition before it on the ground of non-exhaustion of administrative remedies, as only the ORSP ruling regarding the crime of Falsification of Public Documents may be referred to the SOJ, while the ORSP ruling regarding the crimes of False Certification and Slander by Deed may already be elevated before the courts. Thus, the CA should have resolved Cariaga's petition on the merits insofar as the crimes of False Certification and Slander by Deed are concerned. In such an instance, court procedure dictates that the instant case be remanded to the CA for resolution on the merits. "However, when there is already enough basis on which a proper evaluation of the merits may be had — as in this case — the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice."[40] In view of the foregoing — as well as the fact that Cariaga prayed for a resolution on the merits — the Court finds it appropriate to resolve the substantive issues of this case.

II.

In the recent case of *Hilbero v. Morales, Jr.*,[41] the Court reiterated the guiding principles in determining whether or not the courts may overturn the findings of the public prosecutor in a preliminary investigation proceedings on the ground of grave abuse of discretion in the exercise of his/her functions, *viz.*:

> A public prosecutor's **determination of probable cause — that is, one made for the purpose of filing an information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly**

---

[40] See *Sy-Vargas v. The Estate of Ogsos, Sr.*, G.R. No. 221062, October 5, 2016, citing *Gonzales v. Marmaine Realty Corporation*, G.R. No. 214241, January 13, 2016, 781 SCRA 63, 71.

[41] See G.R. No. 198760, January 11, 2017.

pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. **To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same**. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. x x x

x x x x x x x x x

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. As pronounced in *Reyes v. Pearlbank Securities, Inc.* [(582 Phil. 505, 591 [2008])]:

> **A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.** In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for

trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[42] (Emphases in the original.)

In the instant case, a judicious perusal of the records reveals that the ORSP correctly ruled that there is no probable cause to indict respondents of the crimes of Slander by Deed and False Certification. As aptly found by the ORSP, there was no improper motive on the part of respondents in making the blotter entries as they were made in good faith; in the performance of their official duties as barangay officials; and without any intention to malign, dishonor, or defame Cariaga. Moreover, the statements contained in the blotter entries were confirmed by disinterested parties who likewise witnessed the incidents recorded therein. On the other hand, Cariaga's insistence that the blotter entries were completely false essentially rests on mere self-serving assertions that deserve no weight in law.[43] Thus, respondents cannot be said to have committed the crime of Slander by Deed. Furthermore, suffice it to say that the mere act of authenticating photocopies of the blotter entries cannot be equated to committing the crime of False Certification under the law. In sum, the ORSP correctly found no probable cause to indict respondents of the said crimes.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

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

---

[42] See *id*., citing *Aguilar v. DOJ,* 717 Phil. 789, 798-800 (2013).

[43] See *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *People v. Mangune*, 698 Phil. 759, 771 (2012).

FIRST DIVISION

[G.R. No. 224022. June 28, 2017]

TEODORICO A. ZARAGOZA, *petitioner, vs.* **ILOILO SANTOS TRUCKERS, INC.**, *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; REQUISITES, CLARIFIED.—In *Spouses Manzanilla v. Waterfields Industries Corporation*, the Court discussed the requisites of an unlawful detainer suit in instances where there is a subsisting lease contract between the plaintiff-lessor and defendant-lessee, to wit: **For the purpose of bringing an unlawful detainer suit, two requisites must concur: (1) there must be failure to pay rent or comply with the conditions of the lease, and (2) there must be demand both to pay or to comply and vacate.** The first requisite refers to the existence of the cause of action for unlawful detainer, while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued. x x x In other words, for an unlawful detainer suit to prosper, the plaintiff-lessor must show that: ***first***, initially, the defendant-lessee legally possessed the leased premises by virtue of a subsisting lease contract; ***second***, such possession eventually became illegal, either due to the latter's violation of the provisions of the said lease contract or the termination thereof; ***third***, the defendant-lessee remained in possession of the leased premises, thus, effectively depriving the plaintiff-lessor enjoyment thereof; and ***fourth***, there must be a demand both to pay or to comply and vacate and that the suit is brought within one (1) year from the last demand.

APPEARANCES OF COUNSEL

Beltran Koa & Mendoza for petitioner.

Santos-Gatmaytan Gatmaytan Acanto & Manikan for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 22, 2015 and the Resolution[3] dated April 8, 2016 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 07839 which affirmed the Decision[4] dated July 5, 2013 of the Regional Trial Court of Iloilo City, Branch 23 (RTC-Br. 23) in Civil Case No. 12-31294, and accordingly, held, *inter alia*, that petitioner Teodorico A. Zaragoza (petitioner) could not eject respondent Iloilo Santos Truckers, Inc. (respondent) from the leased premises as the latter complied with its obligation to pay monthly rent thru consignation.

The Facts

On June 26, 2003, petitioner Teodorico A. Zaragoza (petitioner) bought a 3,058-square meter (sq. m.) parcel of land located at Cabatuan, Iloilo, denominated as Lot No. 937-A, from his parents, Florentino and Erlinda Zaragoza,[5] and eventually, had the same registered under his name in Transfer Certificate of Title No. 090-2010009190.[6] Petitioner claimed that unknown to him, his father leased[7] a 1,000-sq. m. portion of Lot 937-A (subject land) to respondent Iloilo Santos Truckers, Inc. (respondent), for a period of eight (8) years commencing on December 5, 2003 and renewable for another eight (8) years at the sole option of respondent.[8] This notwithstanding, petitioner

---

[1] *Rollo*, pp. 8-20.

[2] *Id*. at 25-33. Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring.

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

[4] *Id*. at 297-309. Penned by Judge Edgardo L. Catilo.

[5] See Deed of Absolute Sale, *id*. at 47.

[6] *Id*. at 44.

[7] See Lease Contract, *id*. at 50-53.

[8] *Id*. at 26.

allowed the lease to subsist and respondent had been diligent in paying its monthly rent amounting to ₱10,000.00 per month[9] (₱11,200.00[10] including value added tax[11]) pursuant to the lease contract.

Petitioner claimed that when Florentino died, respondent stopped paying rent. On the other hand, respondent maintained that it was willing to pay rent, but was uncertain as to whom payment should be made as it received separate demands from Florentino's heirs, including petitioner.[12] Thus, respondent filed an interpleader case before the Regional Trial Court of Iloilo City, Branch 24 (RTC-Br. 24), docketed as Civil Case No. 07-29371. After due proceedings, RTC-Br. 24 issued: (*a*) Order[13] dated June 22, 2010 dismissing the action for interpleader, but at the same time, stating that respondent may avail of the remedy of consignation; and (*b*) Order[14] dated August 17, 2010 which, *inter alia*, reiterated that respondent may consign the rental amounts with it in order to do away with unnecessary expenses and delay. Pursuant thereto, respondent submitted a Consolidated Report[15] dated January 26, 2011 and a Manifestation and Notice[16] dated May 30, 2011 informing petitioner that it had consigned the aggregate amount of ₱521,396.89[17] before RTC-Br. 24.[18]

---

[9] See *id*.

[10] The monthly rent, however, varied: from February-May 2007, rent fee was ₱11,700.00 and on June 2007, rent fee was ₱11,325.00. See CA *rollo*, p. 282.

[11] See Position Paper dated November 19, 2011; *id*. at 263-275. See also Statement of Account on Unpaid Rentals, *id*. at 281-284.

[12] *Rollo*, p. 26.

[13] *Id*. at 80-81. Penned by Judge Danilo P. Galvez.

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

[15] CA *rollo*, pp. 208-211.

[16] *Id*. at 216-218.

[17] See *id*. at 212-214 and 219.

[18] See *rollo*, p. 26.

This notwithstanding, petitioner sent respondent a letter[19] dated May 24, 2011, stating that granting without conceding the propriety of consignation, the same did not extinguish the latter's obligation to pay rent because the amount consigned was insufficient to cover the unpaid rentals plus interests from February 2007 to May 2011 in the amount of ₱752,878.72. In this regard, petitioner demanded that respondent pay said amount and at the same time, vacate the subject land within fifteen (15) days from receipt of the letter. In its reply,[20] respondent reiterated that it had already paid rent by consigning the amount of ₱521,396.89 with RTC-Br. 24 representing monthly rentals from February 2007 to March 2011, and maintained that it is not obligated to pay interests under the lease contract. In a letter[21] dated June 9, 2011, petitioner clarified that the aforesaid amount consigned by respondent was insufficient to cover monthly rentals from February 2007 to March 2011 which already amounted to ₱562,125.00 without interest. He likewise reiterated that his earlier demand to pay was for the period of February 2007 to May 2011. Thus, petitioner posited that respondent had continuously failed and refused to comply with the terms and conditions of the lease contract concerning the payment of monthly rental, with or without consignation.[22] As his demands went unheeded, petitioner filed on June 21, 2011 a suit[23] for unlawful detainer against respondent before the Municipal Trial Court in Cities, Iloilo City, Branch 10 (MTCC), docketed as Civil Case No. 32-11.[24]

In its defense, respondent maintained, *inter alia*, that its consignation of rental amounts with RTC-Br. 24 constituted

---

[19] CA *rollo*, p. 285.

[20] See letter dated June 7, 2011, *id*. at 286.

[21] *Id*. at 287-288.

[22] *Id*.

[23] See Complaint for Unlawful Detainer with Damages dated June 13, 2011; *rollo*, pp. 38-43.

[24] *Rollo*, pp. 26-27.

compliance with the provisions of the lease contract concerning the monthly rental payments. As such, petitioner has no cause of action against it, and accordingly, it cannot be ejected from the subject land.[25]

Pending the unlawful detainer suit, respondent sent petitioner a letter[26] dated September 29, 2011 expressing its intention to renew the lease contract. In response, petitioner sent letters dated October 10, 2011[27] and October 11, 2011[28] rejecting respondent's intent to renew in view of the latter's failure to timely pay its monthly rentals.

The MTCC Ruling

In a Decision[29] dated December 29, 2011, the MTCC ruled in petitioner's favor, and accordingly, ordered respondent to: (*a*) vacate the subject land; and (*b*) pay petitioner back rentals in the amount of ₱10,000.00 a month from February 2007 and the succeeding months thereafter until it vacates the subject land, plus legal interest of twelve percent (12%) per annum from extrajudicial demand until full payment, ₱20,000.00 as attorney's fees, ₱50,000.00 as litigation expenses, and the costs of suit.[30]

The MTCC found that petitioner's complaint properly makes out a case for unlawful detainer as it alleged that respondent defaulted in its rental payments from February 2007 to May 2011 in the total amount of ₱752,878.72 and that the latter failed to pay the same and to vacate the subject land despite demands to do so.[31] Further, the MTCC opined that respondent's

---

[25] See Answer with Counterclaim dated July 22, 2011; CA *rollo*, pp. 224-239.

[26] *Id*. at 289-290.

[27] *Id*. at 291.

[28] *Id*. at 292.

[29] *Rollo*, pp. 195-228. Penned by Presiding Judge Enrique Z. Trespeces.

[30] *Id*. at 227-228.

[31] See *id*. at 217-220.

consignation with RTC-Br. 24 is void, and thus, did not serve to release respondent from paying its obligation to pay rentals. As there was no valid consignation, respondent was held liable to pay unpaid rentals and that petitioner was justified in terminating the lease contract.[32]

Aggrieved, respondent appealed[33] to the RTC-Br. 23, docketed as Civil Case No. 12-31294.

The RTC-Br. 23 Ruling

In a Decision[34] dated July 5, 2013, the RTC-Br. 23 reversed and set aside the MTCC ruling, and accordingly, dismissed petitioner's complaint. Contrary to the MTCC's findings, the RTC-Br. 23 ruled, *inter alia*, that respondent's consignation of the rental amounts was proper, considering that: (*a*) it was made pursuant to RTC-Br. 24's order, which had jurisdiction over the interpleader case, consignation being an ancillary remedy thereto; (*b*) it was made even before petitioner's filing of the unlawful detainer case and that petitioner knew of such fact; and (*c*) petitioner even withdrew the consigned amounts. Thus, the consignation effectively released respondent from its obligation to pay rent, and hence, petitioner's complaint for unlawful detainer must necessarily fail.[35]

Dissatisfied, petitioner appealed to the CA via a petition for review,[36] docketed as CA-G.R. CEB-SP No. 07839.

The CA Ruling

In a Decision[37] dated July 22, 2015, the CA affirmed the RTC-Br. 23 ruling. It held, *inter alia*, that while petitioner's complaint for unlawful detainer sufficiently states a cause of

---

[32] See *id*. at 220-224.

[33] See Memorandum-On-Appeal dated March 30, 2012; *id*. at 232-271.

[34] *Id*. at 297-309.

[35] See *id*. at 303-307.

[36] Dated July 31, 2013. CA *rollo*, pp. 22-47.

[37] *Rollo*, pp. 25-33.

action on its face, petitioner, however, failed to substantiate his allegation that respondent violated the terms and conditions of the lease contract by intentionally failing to pay the monthly rentals.[38] In this regard, the CA found that respondent was actually ready and willing to comply with its obligation to pay rent, but was in a quandary as to whom it should remit its payment.[39] Hence, it showed good faith by consigning its rental payments to RTC-Br. 24, which was properly made and was acknowledged by petitioner by withdrawing the consigned amounts in court. There being no violation of the lease contract, petitioner could not validly eject respondent from the subject land.[40]

Undaunted, petitioner moved for reconsideration,[41] which was, however, denied in a Resolution[42] dated April 8, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that petitioner could not eject respondent from the subject land as the latter fully complied with its obligation to pay monthly rent thru consignation.

The Court's Ruling

The petition is meritorious.

In *Spouses Manzanilla v. Waterfields Industries Corporation*,[43] the Court discussed the requisites of an unlawful detainer suit in instances where there is a subsisting lease contract between the plaintiff-lessor and defendant-lessee, to wit:

---

[38] *Id*. at 30.

[39] See *id*. at 32.

[40] See *id*. at 31-33.

[41] See motion for reconsideration dated September 2, 2015; CA *rollo*, pp. 504-517.

[42] *Rollo*, pp. 36-37.

[43] 739 Phil. 94 (2014).

For the purpose of bringing an unlawful detainer suit, two requisites must concur: (1) there must be failure to pay rent or comply with the conditions of the lease, and (2) there must be demand both to pay or to comply and vacate. The first requisite refers to the existence of the cause of action for unlawful detainer, while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued. Implied in the first requisite, which is needed to establish the cause of action of the plaintiff in an unlawful detainer suit, is the presentation of the contract of lease entered into by the plaintiff and the defendant, the same being needed to establish the lease conditions alleged to have been violated. Thus, in *Bachrach Corporation v. Court of Appeals* [(357 Phil. 483, 492 [1998])], the Court held that **the evidence needed to establish the cause of action in an unlawful detainer case is (1) a lease contract and (2) the violation of that lease by the defendant**.[44] (Emphases and underscoring supplied)

In other words, for an unlawful detainer suit to prosper, the plaintiff-lessor must show that: ***first***, initially, the defendant-lessee legally possessed the leased premises by virtue of a subsisting lease contract; ***second***, such possession eventually became illegal, either due to the latter's violation of the provisions of the said lease contract or the termination thereof; ***third***, the defendant-lessee remained in possession of the leased premises, thus, effectively depriving the plaintiff-lessor enjoyment thereof; and ***fourth***, there must be a demand both to pay or to comply and vacate and that the suit is brought within one (1) year from the last demand.[45]

In this case, the first, third, and fourth requisites have been indubitably complied with, considering that at the time the suit was instituted on June 21, 2011: (*a*) there was a subsisting lease contract[46] between petitioner and respondent; (*b*) respondent was still in possession of the subject land; and (*c*) the case was

---

[44] *Id*. at 106, citing *Fideldia v. Spouses Mulato*, 586 Phil. 1, 14 (2008).

[45] See *Zacarias v. Anacay*, 744 Phil. 201, 208-209 (2014), citing *Cabrera v. Getaruela*, 604 Phil. 59, 66 (2009).

[46] *Rollo*, pp. 50-53.

filed within one (1) year from petitioner's letter[47] dated May 24, 2011 demanding that respondent pay monthly rentals and at the same time, vacate the subject land. Thus, the crux of the controversy is whether or not the second requisite has been satisfied, that is, whether or not respondent violated the terms and conditions of the lease contract, specifically with regard to the payment of monthly rentals.

According to the RTC-Br. 23 and the CA, respondent did not breach its obligation to pay rent as its consignation of its monthly rentals with RTC-Br. 24 constitutes sufficient compliance thereof.

The RTC-Br. 23 and the CA are mistaken.

To recapitulate, in its letter[48] dated May 24, 2011, petitioner demanded payment for, among others, monthly rentals for the period of **February 2007 to May 2011**. In response thereto,[49] respondent claimed that it had already complied with its obligation to pay monthly rentals via consignation with RTC-Br. 24, as evidenced by the Manifestation and Notice[50] dated May 30, 2011 it filed before said court. However, a closer reading of such letter-reply and Manifestation and Notice reveals that the amount consigned with RTC-Br. 24 represents monthly rentals only for the period of **February 2007 to March 2011**, which is two (2) whole months short of what was being demanded by petitioner. In fact, petitioner pointed out such fact in his letter[51] dated June 9, 2011 to respondent, but the latter still refused to make any additional payments, by either making further consignations with RTC-Br. 24 or directly paying petitioner.

From the foregoing, it appears that even assuming *arguendo* that respondent's consignation of its monthly rentals with RTC-

---

[47] *CA rollo*, p. 285.

[48] *Id*.

[49] See letter dated June 7, 2011, *id*. at 286.

[50] *Id*. at 216-218.

[51] *Id*. at 287-288.

Br. 24 was made in accordance with law, it still failed to comply with its obligation under the lease contract to pay monthly rentals. It is apparent that at the time petitioner filed the unlawful detainer suit on June 21, 2011, respondent was **not** updated in its monthly rental payments, as there is no evidence of such payment for the months of April, May, and even June 2011. Irrefragably, said omission constitutes a violation of the lease contract on the part of respondent.

Considering that all the requisites of a suit for unlawful detainer have been complied with, petitioner is justified in ejecting respondent from the subject land. Thus, the rulings of the RTC-Br. 23 and the CA must be reversed and set aside, and accordingly, the MTCC ruling must be reinstated. However, in light of prevailing jurisprudence, the rental arrearages due to petitioner shall earn legal interest of twelve percent (12%) per annum, computed from first demand on May 24, 2011 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid. The other amounts awarded by the MTCC, *i.e.*, ₱20,000.00 as attorney's fees, ₱50,000.00 as litigation expenses, and the costs of suit) shall likewise earn legal interest of six percent (6%) per annum from finality of the Decision until fully paid.[52]

WHEREFORE, the petition is **GRANTED**. The Decision dated July 22, 2015 and the Resolution dated April 8, 2016 of the Court of Appeals in CA-G.R. CEB-SP No. 07839 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated December 29, 2011 of the Municipal Trial Court in Cities, Iloilo City, Branch 10 in Civil Case No. 32-11 is hereby **REINSTATED** with **MODIFICATION** in that the rental arrearages due to petitioner Teodorico A. Zaragoza shall earn legal interest of twelve percent (12%) per annum, computed from first demand on May 24, 2011 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full satisfaction. The other amounts awarded in favor of petitioner Teodorico A. Zaragoza, such as the ₱20,000.00 as attorney's fees, ₱50,000.00 as litigation

---

[52] See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

expenses, and the costs of suit shall also earn legal interest of 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.

FIRST DIVISION

[G.R. No. 224143. June 28, 2017]

KEVIN BELMONTE *y* GOROMEO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment. In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; ANY DIVERGENCE FROM THE PRESCRIBED PROCEDURE MUST BE JUSTIFIED AND SHOULD NOT AFFECT THE INTEGRITY AND EVIDENTIARY VALUE OF THE

CONFISCATED ITEMS.— Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.** It is important to note that while the "chain of custody rule" demands utmost compliance from the aforesaid officers, Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165, as well as jurisprudence nevertheless provides that non-compliance with the requirements of this rule will not automatically render the seizure and custody of the items void and invalid, so long as: (*a*) there is a justifiable ground for such non-compliance; and (*b*) the evidentiary value of the seized items are properly preserved. In other words, any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated items. x x x Verily, under varied field conditions, the strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In *People v. Rebotazo*, the Court held that so long as this requirement is met, as in this case, non-compliance with Section 21, Article II of RA 9165 will not render the arrest of the accused illegal or the items seized or confiscated inadmissible.

3. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT; CREDIBILITY OF WITNESSES; ACCORDED RESPECT WHEN NO GLARING ERRORS, GROSS MISAPPREHENSION OF FACTS OR SPECULATIVE, ARBITRARY AND UNSUPPORTED CONCLUSIONS ARE MADE FROM SUCH FINDINGS.—** [F]indings of the trial court which are factual in nature and involve the credibility of witnesses, are accorded respect when

no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions are made from such findings. This rule finds even more stringent application where the findings are sustained by the CA, as in this case. After all, as the trier of facts, the RTC has the opportunity to observe the witnesses' demeanor and manner of testifying and, as such, is a better judge of their credibility.

APPEARANCES OF COUNSEL

Raymundo P. Sanglay for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Kevin Belmonte *y* Goromeo (Belmonte) assailing the Decision[2] dated June 30, 2015 and the Resolution[3] dated March 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05362, which affirmed the Decision[4] dated November 23, 2011 of the Regional Trial Court of San Fernando City, La Union, Branch 30 (RTC) in: (1) Crim. Case No. 8979, finding Belmonte, Mark Anthony Gumba *y* Villaraza (Gumba), and Billy Joe Costales (Costales) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act

---

[1] *Rollo,* pp. 13-46.

[2] *Id*. at 48-63. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring.

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

[4] CA *rollo*, pp. 168-190. Penned by Judge Alpino P. Florendo.

[5] 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.

of 2002;" and (2) Crim. Case No. 8997, finding Gumba guilty beyond reasonable doubt of violating Section 11, Article II, thereof.

The Facts

The instant case stemmed from two (2) separate Informations[6] filed before the RTC accusing: (1) Belmonte, Gumba,[7] and Costales of violating Section 5,[8] Article II of RA 9165; and (2) Gumba of violating Section 11,[9] Article II of RA 9165, *viz.*:

---

[6] Records (Crim. Case No. 8979), p. 40; Records (Crim. Case No. 8997), p. 1.

[7] Seventeen (17) years old at the time of the commission of the crime. See Amended Information dated January 3, 2011, records (Crim. Case No. 8979), p. 40.

[8] The pertinent portions of Section 5, Article II provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transactions.

x x x x x x x x x

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

x x x x x x x x x

[9] The pertinent portions of Section 11, Article II provides:

SECTION 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

x x x x x x x x x

(7) 500 grams or more of marijuana;

x x x x x x x x x

Criminal Case No. 8979

That on or about the 23rd day of November 2010, in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, without first securing the necessary permit, license or prescription from the proper government agency, **conspiring, confederating, and mutually helping one another**, did then and there wilfully, unlawfully, feloniously and knowingly sell, dispense and/or deliver one (1) bundle of dried marijuana fruiting tops[,] a dangerous drug, weighing EIGHT HUNDRED TWENTY[-]EIGHT POINT NINETY SIX (828.96) gram[s] to 103 SHARON O. BAUTISTA, who posed as a buyer thereof using marked money consisting of four (4) pieces of five hundred pesos (₱500.00) BILLS, BEARING Serial Nos. KN 368332, EV933163, HH157963 and HL685267, respectively.

CONTRARY TO LAW.[10]

Criminal Case No. 8997

That on or about the 23rd day of November 2010, in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, 17 years old minor (child in conflict with the law and who acted with discernment), without first securing the necessary permit, license, or prescription from the proper government agency, did then and there wilfully, unlawfully, feloniously have in his possession, control and custody four (4) bricks of marijuana dried leaves and fruiting tops with an individual weight of EIGHT HUNDRED SIXTY[-]NINE POINT SIXTEEN (869.16) grams, EIGHT HUNDRED TWENTY[-]EIGHT POINT THIRTY[-]THREE (828.33) grams, EIGHT HUNDRED TWELVE POINT FORTY (812.40) grams and EIGHT HUNDRED NINE POINT FIFTY[-]FOUR (809.54) grams with a total weight of THREE THOUSAND THREE HUNDRED NINETEEN POINT FORTY[-]THREE (3,319.43) grams.

CONTRARY TO LAW.[11]

The prosecution alleged that at around 9 o'clock in the morning of November 23, 2010, Philippine Drug Enforcement Agency

---

[10] Records (Crim. Case No. 8979), p. 40.

[11] Records (Crim. Case No. 8997), p. 1.

(PDEA) Agent Sharon Ominga (Ominga)[12] received information from a confidential informant (agent) that a certain "Mac-Mac," later identified as Gumba,[13] was selling marijuana.[14] Ominga immediately coordinated with the PDEA Quick Reaction Force (QRF) and the Philippine National Police (PNP) Provincial Anti-Illegal Drug Special Operation Task Group (PAIDSOTG) and a buy-bust team composed of Ominga, Intelligence Officer 1 Ranel Cañero (Cañero), and members of the PDEA-QRF and PNP-PAIDSOTG was formed.[15] Ominga was designated as the poseur-buyer, Cañero as arresting officer, and the rest as back-up officers.[16] Ominga then instructed the agent to contact Gumba and place an order for ₱2,000.00 worth of marijuana. Thereafter, Ominga prepared four (4) ₱500.00 bills as buy-bust money, marked them with her initials, and proceeded with the rest of the buy-bust team to the public cemetery of San Gabriel, La Union, the designated place for the transaction.[17]

Upon the buy-bust team's arrival at the target area, Ominga, Cañero, and the agent walked towards the cemetery while the back-up officers waited in the vehicle.[18] As Gumba was taking long to arrive, Ominga's group decided to return to their vehicle. But as they were walking, Gumba and two (2) male companions came into view.[19] When the three (3) men reached Ominga's group, one of Gumba's companions, who turned out to be Belmonte,[20] asked if they were the buyers.[21] The agent confirmed

---

[12] "Sharon Ominga Bautista" or "Sharon Bautista" in some parts of the records.

[13] See Transcript of Stenographic Notes (TSN), May 13, 2011, p.17.

[14] *Rollo*, pp. 49-50. See also TSN, May 13, 2011, p. 5.

[15] *Id*. at 50. See also TSN, May 13, 2011, p. 5.

[16] *Id*. See also TSN, May 13, 2011, p. 6.

[17] *Id*. See also TSN, May 13, 2011, pp. 7-8.

[18] *Id*. See also TSN, May 13, 2011, pp. 8-9.

[19] *Id*. See also TSN, May 13, 2011, p. 9.

[20] *Id*. See also TSN, May 13, 2011, p. 17.

[21] *Id*. See also TSN, May 13, 2011, p. 10.

this, after which Gumba asked for the money from Cañero.[22] Cañero pointed to Ominga, who motioned to hand the marked money to Gumba but Gumba's other companion, later identified as Costales,[23] took it.[24] Gumba then took a bundle of suspected dried marijuana leaves from the black bag he was carrying and handed it to Ominga.[25] Believing that it was marijuana, Ominga declared that they were PDEA agents.[26] Ominga and Cañero were able to arrest Gumba and Belmonte but Costales escaped with the marked money.[27]

Ominga's group waited for the local police and barangay officials to arrive before opening the black bag which, in the meantime, lay on the ground in front of Belmonte and Gumba.[28] When police officers Manzano, Campit, and Barangay Captain[29] Carlos D. Caoeng arrived, Ominga opened the black bag which yielded four (4) more bricks of dried marijuana wrapped in masking tape.[30] Ominga then took a knife and slashed a small portion of each brick to see the contents. Satisfied that it was marijuana, she placed her initials "SOB," signature, and the date of confiscation on the outside of each bundle, including the bundle earlier sold to them.[31] Ominga's group then prepared an inventory, photographed the activity, and asked the PNP and barangay officials to sign the inventory.[32]

---

[22] *Id*. See also TSN, May 13, 2011, pp. 10-11.

[23] *Id*. See also TSN, May 13, 2011, pp. 17-18.

[24] *Id*. See also TSN, May 13, 2011, p. 18.

[25] *Id*. See also TSN, May 13, 2011, p. 18.

[26] *Id*. See also TSN, May 13, 2011, p. 12.

[27] *Id*. See also TSN, May 13, 2011, p. 12.

[28] *Id*. See also TSN, May 13, 2011, p. 12.

[29] Barangay Captain of Poblacion, San Gabriel, La Union. See Records (Crim. Case No. 8997), p. 80.

[30] *Rollo*, p. 50. See also TSN, May 13, 2011, pp. 12-13.

[31] *Id*. at 50-51. See also TSN, May 13, 2011, pp. 13-14.

[32] *Id*. at 51. See also TSN, May 13, 2011, pp. 18-21.

Thereafter, Ominga's group returned to the PDEA office in San Fernando, La Union where Ominga prepared the request for laboratory examination[33] dated November 23, 2010, among other necessary documents.[34] Ominga then delivered the seized items to the PDEA for crime laboratory examination.[35] In her report, PDEA Regional Officer 1 Chemist Lei-Yen Valdez (Valdez), the chemist who conducted the quantitative and qualitative examination on the seized drugs, confirmed that the seized bricks and bundle contained marijuana.[36]

For their defense, Belmonte, Gumba, and Costales (who subsequently surrendered voluntarily) all denied the charges against them and claimed that they were in the wrong place at the wrong time. Belmonte averred that in the morning of November 23, 2010, he and his wife walked to the town proper of San Gabriel, La Union from their barangay in Mamleng-Bucao, San Gabriel, La Union as he intended to proceed to Bauang, La Union to get a duck from his aunt.[37] Upon reaching Barangay Bumbuneg, San Gabriel, La Union, he stopped at Gumba's house to borrow fifty pesos (₱50.00) from Gumba.[38] Gumba lent him the money but requested Belmonte to accompany him to the cemetery to visit his grandfather's tomb.[39] Belmonte agreed and they rode Costales'[40] tricycle but the two had to alight at Lipay Road because there was *palay* laid out on the road leading to the cemetery.[41] As Belmonte and Gumba walked

---

[33] Records (Crim. Case No. 8979), p. 13.

[34] See TSN, May 13, 2011, pp. 23-24.

[35] *Id*. at 24-25.

[36] *Id*. at 26. See Chemistry Report No. PDEAROI-DD010-0008 dated November 23, 2010; records (Crim. Case No. 8979), p. 14.

[37] *Rollo*, p. 53. See also TSN, July 13, 2011, pp. 3-4.

[38] *Id*. See also TSN, July 13, 2011, pp. 3-4.

[39] *Id*. See also TSN, July 13, 2011, pp. 3-4.

[40] Referred to as "Buddha" in some parts of the records. See TSN, July 13, 2011, pp. 4-5.

[41] *Rollo*, p. 53. See also TSN, July 13, 2011, pp. 5-6.

up the road going to the cemetery, they were apprehended by two (2) men later on identified as Cañero and Atty. Allan Ancheta (Atty. Ancheta) of the PDEA-QRF.[42]

Gumba corroborated Belmonte's testimony and admitted knowing Belmonte from high school and Costales from elementary.[43] At around 10 o' clock in the morning of November 23, 2010, Gumba was allegedly home in Bumbuneg, San Gabriel, La Union when Belmonte came to borrow money (₱50.00) which the latter intended to use for his fare going to his aunt in Bauang, La Union.[44] Gumba gave Belmonte the money and requested the latter to accompany him to the cemetery so he could visit his grandfather's tomb.[45] They rode Costales' tricycle to the cemetery and as they continued walking towards the cemetery, two (2) men approached them — one carrying a black bag and wearing a hat, and another who wore short pants and a black shirt.[46] Gumba was allegedly held by the man in short pants, later on identified as Atty. Ancheta, while Belmonte was held by the one with the black bag, later on identified as Cañero.[47] Gumba struggled to free himself but was trapped by another man — a tall man with big body build who he later discovered to be police officer Jose Bautista.[48] Bautista allegedly hit Gumba in the head with a small gun and asked "why do you still try to escape?"[49]

Meanwhile, Costales advanced the defense of alibi. He claimed that on November 23, 2010, while on his way back to the parking area for tricycles in San Gabriel, La Union, he was flagged

---

[42] *Id*. at 53. See also TSN, July 13, 2011, pp. 5-6.

[43] *Rollo*, p. 52. See also TSN, July 6, 2011, pp. 3-4.

[44] *Id*. See also TSN, July 6, 2011, pp. 4-5.

[45] *Id*. See also TSN, July 6, 2011, p. 5.

[46] *Id*. See also TSN, July 6, 2011, p. 6.

[47] *Id*. at 52-53. See also TSN, July 6, 2011, p. 6.

[48] *Id*. at 52. See also TSN, July 6, 2011, p. 4.

[49] *Id*. See also TSN, July 6, 2011, p. 7.

down by Belmonte and Gumba who were his batchmates from elementary.[50] Belmonte and Gumba asked to be brought to the cemetery but they had to alight at Lipay Road because the tricycle could not pass through the road.[51] After dropping them off, he returned to the tricycle station near the Municipal Hall and market where he joined other tricycle drivers.[52] While sitting in a nearby canteen, he learned that two (2) minors were arrested at the cemetery and saw a police patrol car pass by with Belmonte and Gumba on board.[53] Seeing that they were brought to the police station nearby, Costales and the other tricycle drivers proceeded to the police station where they stayed for approximately fifteen (15) minutes before returning to the tricycle station.[54] On January 22, 2011, while vacationing in Baguio City, his uncle informed him that there is a warrant for his arrest.[55] He returned to San Gabriel, La Union on January 24 and surrendered voluntarily to police officer Campit who was his neighbor.[56]

Upon arraignment, Belmonte, Gumba, and Costales all pleaded not guilty to the charges against them.[57] After the preliminary conference in both cases, the RTC ordered that joint trial be conducted.[58]

The RTC Ruling

In a Decision[59] dated November 23, 2011, the RTC found Belmonte, Gumba, and Costales guilty beyond reasonable doubt

---

[50] *Rollo*, pp. 53. See also TSN, July 20, 2011, p. 5.

[51] *Id*. at 53-54. See also TSN, July 20, 2011, p. 6.

[52] *Id*. at 54. See also TSN, July 20, 2011, pp. 6-7.

[53] *Id*. See also TSN, July 20, 2011, pp. 7-8.

[54] *Id*. See also TSN, July 20, 2011, pp. 8-11.

[55] *Id*. See also TSN, July 20, 2011, p. 11.

[56] *Id*. See also TSN, July 20, 2011, pp. 11-12.

[57] Records (Crim. Case No. 8979), p. 57; records (Crim. Case No. 8997), p. 39.

[58] Records (Crim. Case No. 8997), p. 54.

[59] CA *rollo*, pp. 168-190.

of violating Section 5, Article II, of RA 9165 in Crim. Case Nos. 8979, for illegal sale of marijuana, and sentenced Belmonte and Costales to suffer the penalty of life imprisonment and to pay the fine of ₱500,000.00 each. Meanwhile, Gumba, who was 17 years old at the time the crime was committed, was sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of *reclusion temporal*, and to pay the fine of ₱300,000.00. A similar sentence was imposed on Gumba in Crim. Case No. 8997 for violating Section 11, Article II, of RA 9165.

The RTC held that all the elements for the prosecution of sale of dangerous drugs, namely: the identity of the buyer and the seller, the object, and consideration, and the delivery of the thing sold, and the payment therefor, were all established.[60] It noted that the witnesses for the prosecution were able to prove that the buy-bust operation took place and the marijuana subject of the sale was brought and duly presented in court, with the poseur-buyer, Ominga, positively identifying Belmonte, Gumba, and Costales as the sellers of the dangerous drug.[61] The RTC further noted the categorical, consistent, and straightforward narration of the prosecution's witnesses of the circumstances leading to the consummation of the sale and the arrest of all the accused which, according to the RTC, was more credible than the defenses of alibi and frame-up which can be concocted easily.[62] Conspiracy among the accused was also evident as Belmonte even asked if Ominga and her team were the buyers, while Gumba handed them the bundle of marijuana leaves and Costales took the marked money.[63] These, according to the RTC, showed their common interest and purpose.

Aggrieved, Belmonte, Gumba, and Costales elevated their conviction to the CA,[64] arguing that the chain of custody of the

---

[60] *Id*. at 177.

[61] *Id*.

[62] *Id*. at 181-183.

[63] *Id*. at 185.

[64] See Order dated January 4, 2012; records (Crim. Case No. 8997), p. 227.

seized items was not established because the markings and inventory were done in San Gabriel, La Union, while the signing of the Certificate of Inventory[65] by the representatives from the Department of Justice (DOJ) and the media took place in Carlatan, San Fernando City, La Union.

The CA Ruling

In a Decision[66] dated June 30, 2015, the CA affirmed the RTC ruling,[67] finding that the prosecution successfully established the continuous chain of custody of the confiscated marijuana which preserved the identity, integrity, and evidentiary value of the illicit items.[68]

The CA held that the subsequent signing of the Certificate of Inventory undertaken after the arrest of the accused at a different place is not fatal to the case since the prosecution was able to show the continuous whereabouts of the exhibits between the time it came into their possession and until it was tested in the PDEA laboratory.[69] Citing the rule that the crime can still be proven notwithstanding the failure to strictly follow the procedure laid out in Section 21 of RA 9165, the CA ruled that the prosecution was able to satisfactorily show the whereabouts of the exhibits, from the time they came into the possession of the police officer and were tested in the laboratory, up to the time they were offered in evidence.[70] It further held that the accused failed to demonstrate by clear and convincing evidence that they were somewhere else when the buy-bust operation was conducted and that it was physically impossible for them to be present at the scene of the crime before, during, or after it was committed.[71]

---

[65] Dated November 23, 2010; records (Crim. Case No. 8979), p. 16.

[66] *Rollo*, pp. 48-63.

[67] *Id*. at 63.

[68] *Id*. at 61.

[69] *Id*. at 60.

[70] *Id*. at 59-61.

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

Undaunted, Belmonte moved for reconsideration[72] which was, however, denied by the CA in a Resolution[73] dated March 14, 2016; hence the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not Belmonte's conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165, should be upheld.

The Court's Ruling

The appeal has no merit.

In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment.[74]

In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[75]

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[76] Under the said section, the apprehending

---

[72] CA *rollo*, pp. 437-454.

[73] *Rollo*, pp. 65-66. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino concurring.

[74] *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 149; citation omitted.

[75] *People v. Viterbo*, 739 Phil. 593, 601 (2014); citation omitted.

[76] *People v. Sumili*, *supra* note 74, at 150-151.

team shall, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.**[77]

It is important to note that while the "chain of custody rule" demands utmost compliance from the aforesaid officers, Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165,[78] as well as jurisprudence nevertheless provides that non-compliance with the requirements of this rule will not automatically render the seizure and custody of the items void and invalid, so long as: (*a*) there is a justifiable ground for such non-compliance; and (*b*) the evidentiary value of the seized items are properly preserved. In other words, any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated items.

After a thorough review of the records of this case, the Court is convinced that the integrity and evidentiary value of the marijuana confiscated from the accused were preserved, and any deviation from the chain of custody procedure was adequately justified.

Records bear that the bricks and bundle of marijuana confiscated from the accused were immediately marked, photographed, and inventoried upon the arrest of Belmonte and Gumba, and that the markings were done by Ominga herself who placed her initials, signature, and the date of confiscation thereat in the presence of Belmonte, Gumba, the back-up officers

---

[77] See Section 21 (1) and (2), Article II of RA 9165.

[78] Entitled "IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on August 30, 2002.

from the PDEA and the PNP, and the Barangay Captain of Poblacion, San Gabriel.[79]After the inventory and photography at the arrest site, Ominga and her team returned to the PDEA office where Ominga personally prepared the crime laboratory examination request which she delivered to the PDEA chemist, Valdez, together with the bricks and bundle of marijuana confiscated from the accused.[80]

Ominga's testimony on this point was corroborated by Valdez who testified that at around 5 o'clock in the afternoon of November 23, 2010, Ominga delivered four (4) bricks of suspected marijuana leaves and a bundle of marijuana fruiting tops for examination.[81] Valdez also gave a clear account of the procedure for testing the specimen submitted to her such as, weighing and marking them, taking representative samples therefrom, and performing the screening and confirmatory tests thereon.[82] Ominga and Cañero also identified in open court the bricks and bundle of marijuana confiscated from the accused,[83] which matched Valdez's testimony.[84]

By and large, the foregoing sufficiently established the existence of a continuous chain of custody which preserved the identity, integrity, and evidentiary value of the items confiscated from the accused, notwithstanding the absence of the representatives from the media and the DOJ at the time of the arrest and the taking of inventory. Notably, the absence of media representatives at the time Ominga prepared the inventory was sufficiently explained by her during her cross-examination when she testified that when contacted, the media representatives

---

[79] TSN, May 13, 2011, pp. 11-21; TSN, May 4, 2011, pp. 7, 8, and 10. See also Exhibits "D", "I", "J", and "L", Records, (Crim. Case No. 8979), pp. 16, 18, and 19.

[80] *Id*. at 24-25.

[81] TSN, April 8, 2011, pp. 9-10.

[82] *Id*. at 11-18. See also Exhibit "B", Records (Crim. Case No. 8979), p. 13.

[83] TSN, May 13, 2011, p. 15.

[84] TSN, April 8, 2011, p. 19. See Prosecution's Documentary Exhibits, records (Crim. Case No. 8979), p. 16.

told them that they were still far from the area and would not be able to arrive on time.[85] As regards the absence of the DOJ representative, Eulogio Gapasin, the DOJ clerk who signed the inventory, explained that it has been the practice in their office for him to go to the PDEA office to sign the inventories instead of going to the site of the crime.[86] While this is not ideal and the Court by no means condones it, the Court is also cognizant of the fact that this is not the fault of the apprehending officers. Verily, under varied field conditions, the strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[87] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[88] In *People v. Rebotazo*,[89] the Court held that so long as this requirement is met, as in this case, non-compliance with Section 21, Article II of RA 9165 will not render the arrest of the accused illegal or the items seized or confiscated inadmissible.[90]

The Court also observes that while the inventory was not signed by the accused and that they did not have copies of it, such omission was sufficiently explained by the prosecution witnesses who testified that Belmonte and Gumba were given copies thereof but they refused to sign it.[91] The accused also had no relatives or lawyers at the time the arrest and confiscation were effected. As such, their copy of the inventory was given to Barangay Captain Caoeng as their representative.[92]

---

[85] TSN, May 25, 2011, pp. 14-15.

[86] TSN, May 27, 2011, p. 14.

[87] *People v. Pavia*, G.R. No. 202687, January 14, 2015, 746 SCRA 216, 230, citing *People v. Llanita*, 696 Phil. 167, 187 (2012).

[88] *Id*. at 229.

[89] 711 Phil. 150 (2013).

[90] *Id*. at 173.

[91] TSN, May 4, 2011, p. 17; TSN, May 25, 2011, pp. 16-17.

[92] TSN, May 25, 2011, p. 16.

Furthermore, the Court also agrees with the finding that there was conspiracy among the accused. As aptly observed by the RTC and affirmed by the CA, conspiracy among them is evident as Belmonte even asked if Ominga and her team were the buyers. Indeed, there is no other explanation for Belmonte's question aside from the fact that he knew why they were there, *i.e.*, for the sale of the marijuana.

As a final point, it should be mentioned that findings of the trial court which are factual in nature and involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions are made from such findings.[93] This rule finds even more stringent application where the findings are sustained by the CA,[94] as in this case. After all, as the trier of facts, the RTC has the opportunity to observe the witnesses' demeanor and manner of testifying and, as such, is a better judge of their credibility.[95]

All told, there is no reason to disturb the findings of the RTC, as affirmed by the CA, that Belmonte is guilty beyond reasonable doubt of illegal sale of marijuana, as defined and penalized under Section 5, Article II of RA 9165.

WHEREFORE, the petition is **DENIED**. The Decision dated June 30, 2015 and the Resolution dated March 14, 2016 of the Court of Appeals affirming the conviction of Kevin Belmonte *y* Goromeo for violation of Section 5, Article II of Republic Act No. 9165, as amended, and the penalty of life imprisonment and payment of a fine of ₱500,000.00 imposed upon him are hereby **AFFIRMED**.

SO ORDERED.

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

---

[93] *People v. Almodiel*, 694 Phil. 449, 460 (2012), at 463-464, citing *People v. Gaspar*, 669 Phil. 122, 134 (2011).

[94] *Id*. at 464.

[95] *People v. Bautista*, 665 Phil. 815, 826 (2011).

SECOND DIVISION

[G.R. No. 224144. June 28, 2017]

LOLITA BAS CAPABLANCA, *petitioner, vs.* **HEIRS OF PEDRO BAS, represented by JOSEFINA BAS ESPINOSA and REGISTER OF DEEDS OF THE PROVINCE OF CEBU,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; CANCELLATION OF TITLES OF THE PROPERTY; THE CLAIM, IN CASE AT BAR, IS ANCHORED ON A SALE OF PROPERTY TO THE CLAIMANT'S PREDECESSOR-IN-INTEREST AND NOT ON THE FILIATION WITH THE ORIGINAL OWNER, HENCE, THERE IS NO NEED FOR A JUDICIAL DECLARATION OF HEIRSHIP IN ORDER TO ASSERT A RIGHT TO THE PROPERTY OF THE DECEASED.— Contrary to the erroneous conclusion of the Court of Appeals, this Court finds no need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property. The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs. Petitioner's claim is anchored on a sale of the property to her predecessor-in-interest and not on any filiation with the original owner. What petitioner is pursuing is Norberto's right of ownership over the property which was passed to her upon the latter's death. This Court has stated that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased.

2. REMEDIAL LAW; CIVIL ACTIONS; EFFECT OF FAILURE TO PLEAD; DEFENSES AND OBJECTIONS NOT PLEADED EITHER IN A MOTION TO DISMISS OR IN THE ANSWER ARE DEEMED WAIVED; CASE AT BAR.— Here, respondents never raised their objection to

petitioner's capacity to sue either as an affirmative defense or in a motion to dismiss. Rule 9, Section 1 of the Rules of Court states, "[d]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." Thus, it was erroneous for the Court of Appeals to dismiss the complaint on the ground that there was no prior judicial declaration of petitioner's heirship to Norberto. Moreover, the pronouncement in the *Heirs of Yaptinchay* that a declaration of heirship must be made only in a special proceeding and not in an ordinary civil action for reconveyance of property was based on *Litam, etc., et. al. v. Rivera* and *Solivio v. Court of Appeals,* which involved different factual milieus. x x x Here, as stated, the main issue is the annulment of title to property, which ultimately hinges on the validity of the sale from Pedro to Faustina. Petitioner does not claim any filiation with Pedro or seek to establish her right as his heir as against the respondents. Rather, petitioner seeks to enforce her right over the property which has been allegedly violated by the fraudulent acts of respondents.

3. ID.; ID.; INSTITUTION OF A SEPARATE SPECIAL PROCEEDING TO DETERMINE HEIRSHIP MAY BE DISPENSED WITH SINCE THE PARTIES HAD VOLUNTARILY SUBMITTED THE ISSUE TO THE TRIAL COURT AND ALREADY PRESENTED EVIDENCE; CASE AT BAR.— This case has gone a long way since the complaint was filed in 1997. A full-blown trial had taken place and judgment was rendered by the Regional Trial Court where it thoroughly discussed, evaluated, and weighed all the pieces of documentary evidence and testimonies of the witnesses of both parties. At this point, to dismiss the case and require petitioner to institute a special proceeding to determine her status as heir of the late Norberto would hamper, instead of serve, justice. In *Portugal v. Portugal-Beltran*, where the contending parties insisted to be the legal heirs of the decedent, this Court dispensed with the need to institute a separate special proceeding to determine their heirship since the parties had voluntarily submitted the issue to the trial court and already presented their evidence. x x x In this case, there is no necessity for a separate special proceeding and to require it would be superfluous considering that petitioner had already presented evidence to establish her filiation and heirship to Norberto, which respondents never disputed.

APPEARANCES OF COUNSEL

Tomas V. Alonzo for petitioner.
Gabriel J. Cañete for respondents.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review[1] assailing the Decision[2] dated March 12, 2014 and Resolution[3] dated March 15, 2016 of the Court of Appeals, Nineteenth Division, Cebu City. The Court of Appeals reversed the Decision[4] dated December 26, 2007 of Branch 8, Regional Trial Court, Cebu City and dismissed the petitioner's complaint.

The subject matter of this case is Lot 2535 of the Talisay-Minglanilla Friar Land's Estate located in "Biasong, Dumlog, Talisay, Cebu"[5] with an area of 6,120 square meters.[6]

Andres Bas (Andres) and Pedro Bas (Pedro) acquired Lot 2535, "and Patent No. 1724 was issued in their names on May 12, 1937."[7]

---

[1] *Rollo*, pp. 12-43. Filed under Rule 45.

[2] *Id*. at 49-64. The Decision, docketed as CA-G.R. CEB CV No. 03052, was penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan of the Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id*. at 45-47. The Resolution was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi of the Special Former Nineteenth Division, Court of Appeals, Cebu City.

[4] *Id*. at 65-96. The Decision, docketed as Civil Case No. CEB-21348, was penned by Presiding Judge Macaundas M. Hadjirasul.

[5] *Id*. at 84. "Biasong and Dumlog eventually became two (2) separate Barangays . . . and Talisay, a City."

[6] *Id*. at 50 and 84.

[7] *Id*. at 50.

On November 28, 1939, Pedro sold to Faustina Manreal (Faustina), married to Juan Balorio, his portion of Lot 2535 "with a seeding capacity of four (4) chupas of corn."[8] The sale was evidenced by a notarized Deed of Sale dated November 28, 1939.[9]

After the death of Faustina and her husband, their heirs executed a notarized Extra-Judicial Declaration of Heirs and Deed of Absolute Sale dated March 13, 1963. Lot 2535 consisting of "1,000 square meters, more or less," was conveyed to one (1) of their heirs, Alejandra Balorio (Alejandra).[10]

Alejandra sold the land through a Deed of Absolute Sale dated June 13, 1967 to Edith N. Deen, who in turn sold it to Atty. Eddy A. Deen (Atty. Deen) on March 21, 1968.[11]

Upon Atty. Deen's death on December 18, 1978, an extra-judicial settlement of estate, which did not include Lot 2535, was executed by his heirs. Later, or on March 30, 1988, they executed an Additional Extra-Judicial Settlement with Absolute Deed of Sale, which sold the land for ₱10,000.00 to Norberto B. Bas (Norberto), who took possession of and built a house on it.[12]

On December 15, 1995, Norberto died without a will and was succeeded by his niece and only heir, Lolita Bas Capablanca (Lolita).[13]

Subsequently, Lolita learned that a Transfer Certificate of Title (TCT) No. T-96676 dated June 6, 1996 was issued in the names of Andres and Pedro on the basis of a reconstituted Deed of Conveyance No. 96-00004.[14]

---

[8] *Id*. at 73 and 86.

[9] *Id*.

[10] *Id*. at 86.

[11] *Id*. at 51.

[12] *Id*.

[13] *Id*.

[14] *Id*.

In October 1996, Josefina Bas Espinosa (Josefina) represented the Heirs of Pedro Bas to file a complaint for Clarification of Ownership of Lot 2535 against Lolita before the Lupong Tagapamayapa of Barangay Biasong, Talisay, Cebu.[15] The conflict between the parties was not resolved and resulted to the issuance of a Certification to file Action.[16]

On December 16, 1996, a notarized Partition Agreement of Real Property, Quitclaim and Waiver of Rights was executed between the heirs of Andres and Lolita, representing Norberto, whereby they partitioned Lot 2535 among themselves.[17]

Lolita sought to register her portion in Lot 2535 but was denied by the Register of Deeds of Cebu, citing the need for a court order.[18] Lolita then learned that TCT No. T-96676 had been partially cancelled and TCT Nos. T-100181, T-100182, T-100183, and T-100185 had been issued in the name of the Heirs of Pedro Bas, represented by Josefina, on May 29, 1997.[19]

On December 16, 1997, Lolita filed a complaint before the Regional Trial Court of Cebu City for the cancellation of the titles with prayer for moral and exemplary damages, attorney's fees, and litigation expenses.[20]

In their Answer, the Heirs of Pedro Bas claimed that "the sale between Pedro Bas and Faustina Manreal [was] fake, spurious and invalid because [Pedro] who [was] an illiterate never learned how to write his name so that the signature appearing thereon could not have been made by Pedro Bas."[21] They further claimed that the cancellation of TCT No. T-96676

---

[15] *Id*. at 52.

[16] *Id*.

[17] *Id*. at 74.

[18] *Id*. at 52.

[19] *Id*. at 54-55.

[20] *Id*. at 55.

[21] *Id*.

was made pursuant to a final judgment in Civil Case No. 840[22] for Partition, Damages, and Attorney's Fees.[23]

After trial, Branch 8, Regional Trial Court, Cebu City rendered a Decision[24] on December 26, 2007, in favor of Lolita. The trial court held that there was substantial evidence to prove that Lolita had been in long possession of the lot under a claim of ownership as the heir of Norberto and that it was not necessary for her to be first declared as his heir before filing the complaint.[25] It further ruled that to dismiss the case on the ground that Lolita should first be declared an heir would be too late as the Heirs of Pedro Bas did not raise the issue in a motion to dismiss or as an affirmative defense in their complaint.[26]

On the substantive issues, the trial court upheld the validity of the 1939 Deed of Sale executed by Pedro in favor of Faustina. It found Josefina's uncorroborated testimony of Pedro's illiteracy as self-serving and unconvincing to contradict the regularity of the notarized deed. Moreover, her testimony was controverted by the notarized Assignment of Sale Certificate 195, which bore the same signature of Pedro, and by the Heirs of Pedro Bas' answers in Civil Case No. R-10602, another case which contained allegations that Pedro sold his share in the lot to Faustina.[27]

The trial court further held that the object of the sale was determinate, i.e., Pedro's share in Lot 2535 was specified by the boundaries indicated in the Deed of Sale.[28] It concluded

---

[22] *Id*. at 85. The case was entitled *Heirs of Pedro Bas, represented by Josefina Bas-Espinosa v. Sps. Araceli Patatag and Nida Jervacio*. A judgment on compromise was rendered by the court on May 13, 1997.

[23] *Id*. at 55.

[24] *Id*. at 65-96.

[25] *Id*. at 92.

[26] *Id*. at 91.

[27] *Id*. at 93.

[28] *Id*. at 94.

that Norberto acquired the entire share of Pedro in Lot 2535, which was found only after survey in 1996,[29] to actually consist of 3,060 square meters and not 1,000 square meters as insisted by the Heirs of Pedro Bas. The trial court gave credence to Lolita's testimony that before the survey, Pedro's portion was estimated to be 1,000 square meters; hence, the area indicated in the successive transfers of the lot from the heirs of Faustina down to Norberto was "1,000 square meters, more or less."[30] Consequently, with Pedro's sale of his share in Lot 2535, his heirs acquired no portion by inheritance and their titles were null and void and should be cancelled.[31]

Finally, the trial court affirmed that the Judgement of the Municipal Trial Court of Talisay in Civil Case No. 840 for Partition, Damages and Attorney's fees was not binding on Lolita, who was not a party to the case.[32]

The *fallo* of the Decision read:

WHEREFORE, premises considered, a judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring as null and void and ordering the Register of Deeds of the Province of Cebu to cancel the following transfer certificates of title:

1) Transfer Certificate of Title No. T-100181, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-J, Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 304 square meters;

2) Transfer Certificate of Title No. T-100182, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-B, Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 1,554 square meters;

---

[29] *Id*. at 89.

[30] *Id*. at 95.

[31] *Id*.

[32] *Id*. at 93.

3) Transfer Certificate of Title No. T-100183, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-A, Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 965 square meters; and

4) Transfer Certificate of Title No. T-100185, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-A Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 187 square meters.

Costs against the defendants.[33]

The Regional Trial Court subsequently denied the Heirs of Pedro Bas' motion for reconsideration.[34]

Hence, the Heirs of Pedro Bas appealed to the Court of Appeals, making the following lone assignment of error:

The trial court seriously erred in not dismissing the case for plaintiff's lack of cause of action pursuant to (the) doctrinal jurisprudential case of Guido and Isabel Yaptinchay *vs.* Del Rosario (304 SCRA 18) considering that plaintiff in her complaint alleged, she is the sole heir of Norberto Bas.[35]

The Court of Appeals reversed the Regional Trial Court Decision and dismissed the complaint.[36] According to the Court of Appeals, Lolita must first be declared as the sole heir to the estate of Norberto in a proper special proceeding. Thus:

WHEREFORE, premises considered, the Decision dated December 26, 2007, of the Regional Trial Court, 7th Judicial Region, Branch 8, Cebu City in Civil Case No. CEB-21348 for Ownership, Nullity of

---

[33] *Id.* at 95-A-96.

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

[35] *Id.* at 60.

[36] *Id.* at 63-64.

Deeds, Cancellation of TCT Nos. T-100181, T-100182, T-100183[,] and T-100185, covering portions of Lot No. 2535, damages, etc., ordering the cancellation of Transfer Certificates of Title Nos. T-100181, T-100182, T-100183[,] and T-100185 is hereby REVERSED and SET ASIDE.

The complaint of plaintiff-appellee is hereby DISMISSED, without prejudice to any subsequent proceeding to determine the lawful heirs of the late Norberto Bas and the rights concomitant therewith.[37]

Lolita sought reconsideration but was denied in the Court of Appeals Resolution dated March 15, 2016.

Hence, Lolita filed this Petition principally contending that the Court of Appeals committed a reversible error in reversing the Regional Trial Court Decision and dismissing the complaint.

Petitioner argues that the 1999 case of the *Heirs of Yaptinchay v. Del Rosario*[38] cited in the Court of Appeals Decision does not apply to this case because the factual circumstances are different.[39] In that case, the claims of the opposing parties were anchored on their alleged status as heirs of the original owner.[40] "Hence there may have been the need for a previous judicial declaration of heirship in a special proceeding."[41] Here, petitioner does not claim to be an heir of Pedro, the original owner. Rather, her interest over the property is derived from a series of transactions starting from the sale executed by Pedro.[42]

Petitioner further contends that respondents neither raised the ground "lack of cause of action" as an affirmative defense

---

[37] *Id*. at 63-64.

[38] 363 Phil. 393 (1999) [Per *J*. Purisima, Third Division].

[39] *Rollo*, p. 24.

[40] *Id*. at 24-25.

[41] *Id*. at 25.

[42] *Id*. at 26.

nor filed a motion to dismiss before the court *a quo*. Instead, they allowed the trial to proceed with their full participation all throughout. Petitioner asserts that respondents' action or inaction should be constituted a waiver.[43] Otherwise, respondents' "failure to properly act on its perceived defect" in the complaint hampers the speedy disposition of the action "and would only promote multiplicity of suits."[44]

In their two (2)-page Comment,[45] respondents contend that the findings of the Court of Appeals were duly supported by evidence and jurisprudence.

This Court grants the petition.

Contrary to the erroneous conclusion of the Court of Appeals, this Court finds no need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property.

The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs.

Petitioner's claim is anchored on a sale of the property to her predecessor-in-interest and not on any filiation with the original owner. What petitioner is pursuing is Norberto's right of ownership over the property which was passed to her upon the latter's death.[46]

---

[43] *Id*. at 31.

[44] *Id*. at 32.

[45] *Id*. at 111-112.

[46] CIVIL CODE, Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

This Court has stated that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased.[47] In *Marabilles v. Quito:*[48]

> *The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself.* Thus, it has been held that "[t]here is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor" . . . A recent case wherein this principle was maintained is Cabuyao *vs.* [C]aagbay.[49] (Emphasis supplied)

The Court of Appeals' reliance on the ruling in *Heirs of Yaptinchay v. Del Rosario*[50] was misplaced. In that case, the motion to dismiss was filed immediately after the second Amended Complaint was filed.[51] The trial court granted the motion to dismiss, holding that the Heirs of Yaptinchay "have not shown any proof or even a semblance of it—except the allegations that they are the legal heirs of the above-named

---

[47] *Bordalba v. Court of Appeals,* 425 Phil. 407, 416 (2002) [Per *J.* Ynares-Santiago, First Division]; *Heirs of Conti v. Court of Appeals,* G.R. No. 118464, [December 21, 1998], 360 Phil. 536, 545 (1998) [Per *J.* Bellosillo, Second Division].

[48] 100 Phil. 64 (1956) [Per *J.* Angelo Bautista, *En Banc*].

[49] *Id*. at 65-66, citing *Suiliong & Co. vs. Marine Insurance Co., Ltd., et al*., 12 Phil. 13, 19 (1908) [Per *J.* Carson, *En Banc*], *Hernandez vs. Padua*, 14 Phil. 194 (1909) [Per *C.J.* Arellano, First Division], *Cabuyao v. Caagbay,* 95 Phil. 614 (1954) [Per *J.* Concepcion, *En Banc*].

[50] 363 Phil. 393 (1999) [Per *J.* Purisima, Third Division].

[51] *Id*. at 396.

Yaptinchays—that they have been declared the legal heirs of the deceased couple."[52]

Here, respondents never raised their objection to petitioner's capacity to sue either as an affirmative defense or in a motion to dismiss.[53] Rule 9, Section 1 of the Rules of Court states, "[d]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." Thus, it was erroneous for the Court of Appeals to dismiss the complaint on the ground that there was no prior judicial declaration of petitioner's heirship to Norberto.[54]

Moreover, the pronouncement in the *Heirs of Yaptinchay* that a declaration of heirship must be made only in a special proceeding and not in an ordinary civil action for reconveyance of property was based on *Litam*, *etc.*, *et al. v. Rivera*[55] and *Solivio v. Court of Appeals,*[56] which involved different factual milieus.

The facts of the case in *Litam, etc., et. al. v. Rivera*[57] show that during the pendency of the special proceedings for the settlement of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action. They claimed that as the children of the deceased by a previous marriage to a Chinese woman, they were entitled to inherit his one-half (½)

---

[52] *Id*. at 397.

[53] *Rollo*, p. 91.

[54] In *Aldemita v. Heirs of Silva,* 537 Phil. 97 (2006) [Per *J.* Austria-Martinez, First Division], petitioner insisted that without respondents having been first declared as heirs of the owner in a special proceeding, the case for quieting of title must be dismissed for lack of cause of action citing the *Heirs of Yaptinchay v. Del Rosario*. The Court held that petitioner could no longer raise the issue of respondent's capacity to sue after the case had been submitted for decision in the trial court or on appeal before the Court of Appeals.

[55] 100 Phil. 364 (1956) [Per *J.* Concepcion, *En Banc*].

[56] 261 Phil. 231 (1990) [Per *J.* Medialdea, First Division].

[57] 100 Phil. 364 (1956) [Per *J.* Concepcion, *En Banc*].

share of the conjugal properties acquired during his marriage to Marcosa Rivera (Marcosa).[58] The trial court in the civil case declared, among others, that the plaintiffs-appellants were not children of the deceased and that Marcosa was his only heir.[59] On appeal, this Court ruled that such declaration—that Marcosa was the only heir of the decedent—was improper because the determination of the issue was within the exclusive competence of the court in the special proceedings.[60]

In *Solivio v. Court of Appeals*,[61] the deceased Esteban Javellana, Jr. was survived by Celedonia Solivio (Celedonia), his maternal aunt, and Concordia Javellana–Villanueva (Concordia), his paternal aunt.[62] Celedonia filed the intestate proceedings and had herself declared as sole heir and administratrix of the estate of the decedent to facilitate the implementation of the latter's wish to place his estate in a foundation named after his mother.[63] While the probate proceeding was pending, Concordia filed a separate civil action where she sought to be declared as co-heir and for partition of the estate.[64] This Court held that the "separate action was improperly filed for it is the probate court that has exclusive jurisdiction to make a just and legal distribution of the estate."[65] This Court further held that "in the interest of orderly procedure and to avoid confusing and conflicting dispositions of a decedent's estate, a court should not interfere with probate proceedings pending in a co-equal court."[66]

---

[58] *Id*. at 366.

[59] *Id*. at 370.

[60] *Id*. at 378.

[61] 261 Phil. 231 (1990) [Per *J*. Medialdea, First Division].

[62] *Id*. at 236.

[63] *Id*. at 237.

[64] *Id*. at 238.

[65] *Id*. at 240.

[66] *Id*. at 241.

In *Litam* and *Solivio,* the adverse parties were putative heirs to a decedent's estate or parties to the special proceedings for an estate's settlement. Hence, this Court ruled that questions on the status and right of the contending parties must be properly ventilated in the appropriate special proceeding, not in an ordinary civil action.

Here, as stated, the main issue is the annulment of title to property, which ultimately hinges on the validity of the sale from Pedro to Faustina. Petitioner does not claim any filiation with Pedro or seek to establish her right as his heir as against the respondents. Rather, petitioner seeks to enforce her right over the property which has been allegedly violated by the fraudulent acts of respondents.

Furthermore, as found by the Regional Trial Court:

> The plaintiff [Lolita] has sufficient interest to protect in the subject portion of Lot 2535. She had been there for around thirty (30) years, and had been in possession thereof under a claim of ownership as an alleged heir of Norberto Bas after the latter's death on December 15, 1993, that is: long before the issuance of TCT Nos. T-100181, T-100182, T-100183[,] and T-100185 in 1997, and even TCT No. T-96676 in 1996. Moreover, it is annotated on TCT No. T-96676 (Exhibit "G") that she, together with the heirs of Osmundo Bas, executed a declaration of heirs with partition, quitclaim, etc., dated December 16, 1996, registered on March 3, 1997 . . . wherein they adjudicated unto themselves and partitioned Lot No. 2535 . . . She also executed on June 14, 1997 an Affidavit of Adjudication by Sole Heir, declaring herself as the sole heir of Norberto Bas and adjudicated unto herself the subject portion pursuant to Section 1, Rule 74 of the 1997 Revised Rules of Civil Procedure.
>
> The existence of the questioned certificates of title, and other related documents, constitute clouds on said interest. There seems, therefore, to be no necessity that the plaintiff should have been declared first as an heir of Norberto Bas as a prerequisite to this action. Her possession of the subject lot under a claim of ownership is a sufficient interest to entitle her to bring this suit.[67] (Citation omitted)

---

[67] *Rollo*, p. 92.

This case has gone a long way since the complaint was filed in 1997. A full-blown trial had taken place and judgment was rendered by the Regional Trial Court where it thoroughly discussed, evaluated, and weighed all the pieces of documentary evidence and testimonies of the witnesses of both parties. At this point, to dismiss the case and require petitioner to institute a special proceeding to determine her status as heir of the late Norberto would hamper, instead of serve, justice.

In *Portugal v. Portugal-Beltran*,[68] where the contending parties insisted to be the legal heirs of the decedent, this Court dispensed with the need to institute a separate special proceeding to determine their heirship since the parties had voluntarily submitted the issue to the trial court and already presented their evidence. It held:

> It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case — subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.
>
> In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners, the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon[.][69] (Citation omitted)

In this case, there is no necessity for a separate special proceeding and to require it would be superfluous considering that petitioner had already presented evidence to establish her

---

[68] 504 Phil. 456 (2005) [Per *J.* Carpio-Morales, Third Division].

[69] *Id.* at 470-471.

filiation and heirship to Norberto, which respondents never disputed.

WHEREFORE, the Petition is **GRANTED.** The Court of Appeals Decision dated March 12, 2014 and Resolution dated March 15, 2016 are **VACATED and SET ASIDE**. The Decision dated December 26, 2007 of Branch 8, Regional Trial Court, Cebu City is **REINSTATED**.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Mendoza,* and *Martires, JJ.,* concur.

Carpio, J., on official leave.

---

[*] Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

INDEX

INDEX

COA Commission Proper that the President and CEO as well as the Vice President of QUEDANCOR are made liable for issuing the aforesaid guidelines and authorizing the release of the aforesaid benefits; this solidary liability is in accordance with Book VI, Chap. V, Sec. 43 of the Administrative Code. (Sambo *vs.* Commission on Audit, G.R. No. 223244, June 29, 2017) p. 344

— P.D. No. 1445 spells out the rule on general liability for unlawful expenditures: Under this provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor. (*Id.*)

— Sec. 19 of COA Circular No. 94-001, the Manual of Certificate of Settlement and Balances, provides for the bases for determining the extent of personal liability: Public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement; however, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that recipients or payees in good faith need not refund these disallowed amounts. (*Id.*)

— The receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of the government officials directly responsible therefor, as in the case of *Maritime Industry Authority v. COA*, where the Court held that the approving officers therein who acted in bad faith are solidarily liable to return the disallowed funds, even if they never got hold of them. (*Id.*)

ALIBI

As a defense — In order for alibi to prosper, the accused must be able to establish that it was physically impossible for

and that the killing was perpetrated "in the course of the commission of the carnapping or on the occasion thereof." (*Id*.)

Elements — The elements of carnapping as defined and penalized under R.A. No. 6539, as amended are the following: 1) That there is an actual taking of the vehicle; 2) That the vehicle belongs to a person other than the offender himself; 3) That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and 4) That the offender intends to gain from the taking of the vehicle. (People *vs.* Macaranas *y* Fernandez, G.R. No. 226846, June 21, 2017) p. 610

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Elements — The elements of the offense penalized under Sec. 3(f) of R.A. No. 3019, to wit: 1.] The offender is a public officer; 2.] The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him; 3.] Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and 4.] Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another. (Lacap *vs.* Sandiganbayan [Fourth Division], G.R. No. 198162, June 21, 2017) p. 441

Violation of — If the deliberate refusal to act or intentional inaction on an application for mayor's permit is motivated by personal conflicts and political considerations, it thus becomes discriminatory, and constitutes a violation of the Anti-Graft and Corrupt Practices Act; the authority of the mayor to issue licenses and permits is not ministerial, it is discretionary. (Lacap *vs.* Sandiganbayan [Fourth Division], G.R. No. 198162, June 21, 2017) p. 441

COAL DEVELOPMENT ACT OF 1976 (P.D. NO. 972)

CODE OF CONDUCT FOR COURT PERSONNEL

(Belmonte *y* Goromeo *vs.* People, G.R. No. 224143, June 28, 2017) p. 844

Illegal delivery and transportation of dangerous drugs — A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation", is not prohibited by law and does not render invalid the buy-bust operation, as the sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. (People *vs.* Alacdis *y* Anatil *a.k.a.* "Welton", G.R. No. 220022, June 19, 2017) p. 219

— Penalties, discussed. (*Id.*)

— The unlawful act of "delivery" is defined under Sec. 3, Art. I of R.A. No. 9165; it must be proven that: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery; all elements present in this case. (*Id.*)

Illegal delivery of dangerous drugs — Possession of considerable quantity of prohibited drugs, coupled with the fact that the possessor is not a user thereof, indicate the intention to sell, distribute or deliver the prohibited drugs; application. (People *vs.* Alacdis *y* Anatil *a.k.a.* "Welton", G.R. No. 220022, June 19, 2017) p. 219

Illegal sale of dangerous drugs — In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment; In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. (Belmonte *y* Goromeo *vs.* People, G.R. No. 224143, June 28, 2017) p. 844

— The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate

COURTS

Administrative complaint against — Respondent is legally clothed with judicial discretion in the disposition of cases, which involves the exercise of judgment; it is only where the error is so gross, deliberate and malicious, or incurred with evident bad faith that administrative sanctions may be imposed against the erring judge; rationale. (Rizalado *vs.* Judge Bollozos, OCA IPI No. 11-3800-RTJ, June 19, 2017) p. 20

Judicial remedies against errors or irregularities — Nature of disciplinary proceedings and criminal actions against judges. (Rizalado *vs.* Judge Bollozos, OCA IPI No. 11-3800-RTJ, June 19, 2017) p. 20

— The law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction; ordinary remedies and extraordinary remedies, distinguished. (*Id.*)

Jurisdiction — Jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached; jurisdiction of a court in criminal cases, how determined. (Ambassador Hotel, Inc. *vs.* Social Security System, G.R. No. 194137, June 21, 2017) p. 424

— The more logical and orderly approach is for the court to determine jurisdiction by the allegations in the information or criminal complaint, as supported by the affidavits and exhibits attached therein, and not by the evidence at trial; once jurisdiction attaches, it shall not be removed from the court until the termination of the case. (*Id.*)

— The Department of Justice's Department Circular No. 70 dated July 3, 2000, entitled the "2000 NPS Rule on Appeal," as amended, explained; further strengthened by a later issuance, *i.e.*, Department Circular No. 018-14 dated June 18, 2014, entitled "Revised Delegation of Authority on Appealed Cases." (*Id*.)

DIRECT ASSAULT

Commission of — Direct assault, a crime against public order, may be committed in two ways; discussed; this case falls under the second form of direct assault. (Guelos *vs.* People, G.R. No. 177000, June 19, 2017) p. 37

Elements — The following elements must be present: 1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance; 2. That the person assaulted is a person in authority or his agent; 3. That at the time of the assault, the person in authority or his agent (a) is engaged in the actual performance of official duties, or (b) is assaulted by reason of the past performance of official duties; 4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties; and 5. That there is no public uprising. (Guelos *vs.* People, G.R. No. 177000, June 19, 2017) p. 37

EMPLOYEES COMPENSATION AND STATE INSURANCE FUND (P.D. NO. 626, AS AMENDED)

Death benefits due to cerebrovascular accident (CVA) and hypertension — For cerebro-vascular accident, the claimant must prove the following: (1) there must be a history, which should be proved, of trauma at work (to the head specifically) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry; (2) there must be a direct connection between the trauma or exertion in the course of the employment and the cerebro-vascular attack; and (3) the trauma or exertion then and there caused a brain hemorrhage; essential hypertension, when compensable.

work because continued employment is rendered impossible, or unlikely, as an offer involving a demotion in rank and a diminution in pay. (*Id*.)

— It is incumbent upon the employer to show that the security guard was redeployed within six (6) months from his/her last deployment; otherwise, a security guard would be deemed to have been constructively dismissed. (*Id*.)

— Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard; when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed. (*Id*.)

— The offer of reinstatement will not absolve the employer from the consequences of the employee's dismissal where at the time the offer for reinstatement was made, the employee's constructive dismissal had long been consummated. (*Id*.)

Illegal dismissal — If there is no dismissal, then there can be no question as to the legality or illegality thereof; absent any evidence that she was prevented from entering her workplace, what remained was her bare allegation, which could not certainly be considered substantial evidence. (Claudia's Kitchen, Inc. *vs.* Tanguin, G.R. No. 221096, June 28, 2017) p. 784

Separation pay — Separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Art. 298 [formerly Art. 283] of the Labor Code; 2) in case of termination due to disease or sickness under Art. 299 [formerly Art. 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character; 4) where the dismissed employee's position is no longer available; 5) when the continued relationship between the employer and the employee is

— Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts; elements, explained. (*Id*.)

Waiver of monetary claims — Not all quitclaims are *per se* invalid or against policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transactions; application. (Zambrano *vs.* Philippine Carpet Mfg. Corp., G.R. No. 224099, June 21, 2017) p. 569

ESTAFA

Civil liability — The Court further clarified that whenever the elements of *estafa* are not established, and that the delivery of any personal property was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case; when not proven. (Estate of Poblador, Jr. *vs.* Manzano, G.R. No. 192391, June 19, 2017) p. 66

Commission of — Estafa under Art. 315, par. 2(a) of the Revised Penal Code is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud. (People *vs.* Dela Cruz, G.R. No. 214500, June 28, 2017) p. 745

Elements — In general, the elements of *estafa* are: (1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person; the essence of the crime is the

(Alejo *vs.* Sps. Ernesto Cortez and Priscilla San Pedro, G.R. No. 206114, June 19, 2017) p. 129

— It is settled that where the other spouse's putative consent to the sale of the conjugal property appears in a separate document which does not contain the same terms and conditions as in the first document signed by the other spouse, a valid transaction could not have arisen; participation in or awareness of the negotiations is not consent. (*Id*.)

FORCIBLE ENTRY

Elements — For a forcible entry case to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy, or stealth; and (c) that the action was filed within one year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property; purpose of a forcible entry suit, stated. (Sambalilo *vs.* Sps. Llarenas, G.R. No. 222685, June 21, 2017) p. 552

FORUM SHOPPING

Elements — The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other; thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. (Municipality of Cainta *vs.* City of Pasig, G.R. No. 176703, June 28, 2017) p. 666

the part of the public cannot be registered with the IPO; such is the import of Sec. 123.1(d)(iii) of R.A. 8293; jurisprudence has noted two (2) types of confusion, discussed. (Mang Inasal Philippines, Inc. *vs.* IFP Mfg. Corp., G.R. No. 221717, June 19, 2017) p. 261

— Applying the dominancy test, the OK Hotdog Inasal mark is a colorable imitation of the Mang Inasal mark; explained. (*Id.*)

— Related goods and services are those that, though non-identical or non-similar, are so logically connected to each other that they may reasonably be assumed to originate from one manufacturer or from economically-linked manufacturers; in determining whether goods or services are related, several factors may be considered; factors enumerated. (*Id.*)

— Similarity or colorable imitation; dominancy test and holistic test, distinguished. (*Id.*)

— The curl snack product for which the registration of the OK Hotdog Inasal mark is sought is related to the restaurant services represented by the Mang Inasal mark, in such a way that may lead to a confusion of business; explained. (*Id.*)

— To be regarded as similar to an earlier mark, it is enough that a prospective mark be a colorable imitation of the former; colorable imitation denotes such likeness in form, content, words, sound, meaning, special arrangement or general appearance of one mark with respect to another as would likely mislead an average buyer in the ordinary course of purchase. (*Id.*)

— To fall under the ambit of Sec. 123.1(d)(iii) and be regarded as likely to deceive or cause confusion upon the purchasing public, a prospective mark must be shown to meet two (2) minimum conditions: 1. The prospective mark must nearly resemble or be similar to an earlier mark; and 2. The prospective mark must pertain to goods or services that are either identical, similar or related to the goods or services represented by the earlier mark. (*Id.*)

Penalty — The crime of illegal recruitment is penalized under Sec. 6 and 7 of RA 8042; as the crime was committed in large scale, it is an offense involving economic sabotage and is punishable by life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. (People *vs.* Dela Cruz, G.R. No. 214500, June 28, 2017) p. 745

MOTION FOR NEW TRIAL

Newly discovered evidence — Rule 45, Sec. 1 clearly provides that a motion for new trial is not among the remedies which may be entertained together with a petition for appeal on *certiorari*. (Guelos *vs.* People, G.R. No. 177000, June 19, 2017) p. 37

MURDER

Civil liability — This Court resolves to modify the damages awarded by the appellate court in line with the recent jurisprudence; award of civil indemnity, moral damages, exemplary damages, and temperate damages, discussed. (People *vs.* Ohayas, G.R. No. 207516, June 19, 2017) p. 141

Civil liability of accused-appellant — Discussed. (People *vs.* Sabida *y* Sadiwa, G.R. No. 208359, June 19, 2017) p. 185

Elements — The elements of the crime of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide; requisites have been established by the prosecution in this case. (People *vs.* Ohayas, G.R. No. 207516, June 19, 2017) p. 141

NEW TRIAL

Grounds — In accordance with the Court's pronouncement in *Reyes,* and in view of the irregularities prejudicial to the rights of the petitioner that attended the trial, the case calls for a new trial pursuant to Sec. 2 of Rule 121

PRELIMINARY INVESTIGATION

Probable cause — Guiding principles in determining whether or not the courts may overturn the findings of the public prosecutor in a preliminary investigation proceedings on the ground of grave abuse of discretion in the exercise of his/her functions, *viz.*:A public prosecutor's determination of probable cause — that is, one made for the purpose of filing an information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny; exception; underlying principle behind the courts' power to review a public prosecutor's determination of probable cause. (Calivo Cariaga *vs.* Sapigao, G.R. No. 223844. June 28, 2017) p. 819

PRESUMPTIONS

Concept — A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action; it is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts. (Estate of Poblador, Jr. *vs.* Manzano, G.R. No. 192391, June 19, 2017) p. 66

Disputable presumptions — Under Sec. 3, Rule 131, disputable presumptions are satisfactory, if uncontradicted, but may be contradicted and overcome by other evidence, as in this case. (Estate of Poblador, Jr. *vs.* Manzano, G.R. No. 192391, June 19, 2017) p. 66

Presumption of regular performance of official duties — Petitioners have equally failed to make a case justifying their non-observance of existing auditing rules and regulations; they failed to faithfully discharge their respective duties and to exercise the required diligence which resulted in the irregular disbursements paid to the employees whose appointments have not been approved by the CSC. (Sambo *vs.* Commission on Audit, G.R. No. 223244, June 29, 2017) p. 344

vs. T.A.N. Properties remains to be the governing rule in land registration cases; substantial compliance may be applied, at the discretion of the courts, only if the trial court rendered its decision on the application prior to June 26, 2008, the date of the promulgation of T.A.N. Properties; the petitioners failed to prove the first requisite for registration under Sec. 14(1). (*Id.*)

— The present rule requires the presentation, not only of the certification from the CENRO/PENRO, but also the submission of a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. (*Id.*)

Registration of land under Section 14(2) of P.D. No. 1529 — For registration under this provision to prosper, the applicant must establish the following requisites: (a) the land is an alienable and disposable, and patrimonial property of the public domain; (b) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (c) the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession. (Espiritu, Jr. *vs.* Rep. of the Phils., G.R. No. 219070, June 21, 2017) p. 506

— The registration of land under Sec. 14(2) of P.D. No. 1529 requires not only the declaration of alienability and disposability, but there must also be an express declaration that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial property; petitioners failed to present any competent evidence which could show that the subject land had been declared as part of the patrimonial property of the State; thus, it could not be registered under Sec. 14(2) of P.D. No. 1529. (*Id.*)

QUALIFIED RAPE

Commission of — Conviction of the accused is modified from rape to qualified rape; penalty and civil liability. (People *vs.* Monroyo *y* Mahaguay, G.R. No. 223708, June 28, 2017) p. 802

Elements — When present. (People *vs.* Monroyo *y* Mahaguay, G.R. No. 223708, June 28, 2017) p. 802

RAPE

Child abuse under Section 5 (b) — Art. 266-A of the Revised Penal Code and Sec. 5(b), Art. III of R.A. No. 7610, harmonized; the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced; likewise, rape cannot be complexed with a violation of Sec. 5 (b) of R.A. No. 7610; under Sec. 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law. (People *vs.* Tubillo *y* Abella, G.R. No. 220718, June 21, 2017) p. 525

Elements — Under Art. 266-A of the RPC, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age. (People *vs.* Tuballas *y* Faustino, G.R. No. 218572, June 19, 2017) p. 201

— Under Art. 266-A (1) of the RPC, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age; rape with force and intimidation, committed. (People *vs.* Tubillo *y* Abella, G.R. No. 220718, June 21, 2017) p. 525

Guidelines in the review of rape cases — In reviewing rape cases, this Court is guided by three principles, to wit:

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATORY ACT (R.A. NO. 7610)

Child abuse — Sec. 2(h) of the Implementing Rules and Regulations of R.A. No. 7610 defines *lascivious conduct* as: The 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; such acts are punished as sexual abuse under R.A. No. 7610. (Labandria Awas *vs.* People, G.R. No. 203114, June 28, 2017) p. 700

Child abuse under Section 5(b) — The elements of Sec. 5(b) of R.A. No. 7610, are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. (People *vs.* Tubillo *y* Abella, G.R. No. 220718, June 21, 2017) p. 525

Child prostitution and other sexual abuse — The elements of sexual abuse under Sec. 5(b) of R.A. No. 7610 are as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age; explained. (Escalante *vs.* People, G.R. No. 218970, June 28, 2017) p. 769

— It is not the title of the complaint or information which is controlling but the recital of facts contained therein; the information must sufficiently allege the acts or omissions complained of to inform a person of common understanding what offense he is being charged with; application. (*Id*.)

was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority; rape under Art. 266-A(1)(d) of the Revised Penal Code, as amended, is termed statutory rape as it departs from the usual modes of committing rape. (*Id.*)

— The Court differentiated the term "mentally-retarded" or "intellectually disabled" from the terms "deprived of reason" and "demented" as used under Art. 266-A, par. 1(b) and 1(d) of the RPC. (*Id.*)

— When a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape; what makes the case stronger for the prosecution is that the testimony of AAA is corroborated by the medical findings of the presence of a "deep healing laceration" in her hymen which was caused by a blunt object. (*Id.*)

Penalty — The passage of R.A. No. 9346 prohibits the imposition of the death penalty without, nonetheless, declassifying the crime of qualified rape as heinous; thus, the trial court correctly reduced the penalty from death to *reclusion perpetua,* without eligibility for parole. (People *vs.* Deniega *y* Espinosa, G.R. No. 212201, June 28, 2017) p. 712

SUMMONS

Service of — A trial court acquires jurisdiction over the person of the defendant by service of summons; however, it is equally significant that even without valid service of summons, a court may still acquire jurisdiction over the person of the defendant, if the latter voluntarily appears before it. (Tujan-Militante *vs.* Nustad, G.R. No. 209518, June 19, 2017) p. 192

— The subsequent filing of a motion for reconsideration which sought for affirmative relief is tantamount to voluntary appearance and submission to the authority of such court. (*Id.*)

TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (TCC)

TAXATION

Application for tax refund — A taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT; the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court. (Commissioner of Internal Revenue *vs.* Semirara Mining Corp., G.R. No. 202922, June 19, 2017) p. 113

THE OMBUDSMAN ACT OF 1989 (R.A. NO. 6770)

Powers — The OMB is authorized to promulgate its own rules of procedure by none other than the Constitution, which is fleshed out in Sec. 18 and 27 of The Ombudsman Act of 1989 (R.A. No. 6770), empowering the OMB to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties" and to accordingly amend or modify its rules as the interest of justice may require; the CA cannot just stay the execution of decisions rendered by the OMB. (Cobarde-Gamallo *vs.* Escandor, G.R. No. 184464, June 21, 2017) p. 378

TREACHERY

As a qualifying circumstance — There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure its execution, without risk to himself arising from the defense which the offended party might make; the essence of treachery is the sudden and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim; when established. (People *vs.* Ohayas, G.R. No. 207516, June 19, 2017) p. 141

As an aggravating circumstance — Treachery is evident from the fact that the victim could not have been aware of the imminent peril to his life; there was treachery not only because of the suddenness of the attack but also because

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

Page

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS